



Responsiveness Summary and Concise Explanatory Statement

**For the adoption of:
Chapter 173-153 WAC
Water Conservancy Boards**

Administrative Order # 01-13

December 2002

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**Responsiveness Summary
and
Concise Explanatory Statement
for the adoption of
Chapter 173-153 WAC, Water Conservancy Boards**

Administrative Order # 01-13

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CONCISE EXPLANATORY STATEMENT

I. Introduction and Background

What is the background to this rule amendment?

In 1997 the Legislature authorized the creation of Water Conservancy Boards (boards) through chapter 90.80 RCW. The statute authorizes boards to process water right transfer applications and make records of decision on the proposed applications. The Department of Ecology (Ecology) maintains final review authority of the records of decision and issues administrative orders to affirm, modify, or reverse the records of decision. Ecology's administrative order is appealable to the Pollution Control Hearings Board (PCHB).

In 1998 Lewis and Benton Counties created the first two water conservancy boards. These two boards operated under a pilot (or draft) rule developed by Ecology. The boards then provided feedback to Ecology as it worked toward the adoption of a permanent rule. Chapter 173-153 WAC was subsequently adopted in November 1999.

The Legislature significantly amended the water conservancy board statute in 2001. As a result of the amendments some sections of the rule became obsolete or partially ineffective. An operational guidance document was developed by Ecology as interim guidance to boards, counties, and interested parties.

There are currently 21 existing boards throughout the state. Five of those boards are on the West side and 16 are on the East side of the state.

What is the purpose of the rule?

This rule is intended to:

- Establish procedures that Ecology, boards, applicants, concerned agencies, and the public will follow in implementing chapter 90.80 RCW, *Water Conservancy Boards*;
- Define terms used in statute;
- Assist counties in the formation of boards;
- Encourage boards' operational independence;
- Assist boards in operational consistency; and
- Outline the boards' reporting requirements.

Why are these amendments necessary and who do they effect?

This rule establishes procedures Ecology, boards, applicants for water right transfers, and counties will follow to implement chapter 90.80 RCW. The proposed rule amendments

are intended to make the rule consistent with the amended statute and provide clear guidance to boards and the Ecology staff supporting boards.

The rule will affect counties, which are authorized under chapter 90.80 RCW to create boards, with final approval by the director of Ecology. Counties are also authorized to appoint the board commissioners and may choose to dissolve a board. The rule provides counties with a procedures for taking these actions.

This rule also affects Ecology and boards. Chapter 90.80 RCW authorizes Ecology to review the records of decision on water right transfers made by boards. The department provides technical assistance if requested by boards, as well as specific training for all board commissioners. The rule provides Ecology staff with procedures and guidelines to use when implementing these responsibilities.

Chapter 90.80 RCW authorizes boards to make records of decisions on water right transfer applications. They are also required to operate under certain operational statutes such as the Open Public Meetings Act, chapter 42.30 RCW, and the Public Records Act, chapter 42.17 RCW. This rule provides boards with guidance for accepting, investigating, and making decisions on water right transfer applications.

What changed in the statute?

When the legislature amended chapter 90.80 RCW in 2001, a number of significant changes were made:

- Added board composition requirements;
- Changed the comment/intervening process;
- Added flexibility to change the structure, jurisdiction, and/or number of commissioners on a board;
- Broadened the scope of authority of boards;
- Requires availability of technical assistance from Ecology to boards;
- Detailed the process for addressing a conflict of interest;
- Provided authority for counties to dissolve boards;
- Added quorum requirements;
- Modified Public Records Act responsibility; and
- Required Ecology to post boards' records of decision on the Internet.

What are the key amendments to the rule?

- Outlines restructuring process by counties;
- Defines water right holder/non-water right holder;
- Explains dual filing of applications with boards and Ecology;
- Defines technical assistance to boards;
- Provides a procedure for withdrawal of records of decision from Ecology back to boards;

- Defines alternates to appointed commissioners; and
- Standardizes forms.

What is the statutory authority for this rule?

Chapter 90.80 RCW

Water Conservancy Board Statute

When is this rule scheduled for adoption and when will it become effective?

The rule is scheduled for adoption on December 9, 2002. The rule will become effective thirty-one (31) days after it is filed with the Office of the Code Reviser.

II. Describe Differences Between the Proposed and Final Rule

As a result of public comment and additional internal review, the final rule has been revised from the version known as the proposed rule amendments. Those revisions are discussed below. The following includes all sections of the rule whether or not any language has been amended. Text deleted from the proposed rule amendment is in strikethrough format and the new text is underlined.

WAC 173-153-010 What are the purpose and authority of this chapter?

The purpose of this chapter is to establish procedures the department of ecology (ecology), water conservancy boards (boards), applicants, concerned agencies, and the public will follow in implementing chapter 90.80 RCW. Chapter 90.80 RCW authorizes establishment of water conservancy boards and vests them with certain powers relating to water right transfers. RCW 90.80.040 authorizes the department to adopt rules necessary to carry out the purposes of the statute.

Reason for change

This language was added to clarify the authority of the department to establish rules for the purpose of implementing chapter 90.80 RCW.

WAC 173-153-020 To what does this chapter apply?

These procedures apply to the establishment of water conservancy boards in accordance with chapter 90.80 RCW and to:

- (1) How such boards will function when processing water right transfer applications that are filed with a board or that are transferred to a board from ecology at an applicant's request;
- (2) Reporting requirements of boards;
- (3) How ecology will support and interact with boards; and
- (4) How interested agencies and the public may participate in the board process.

WAC 173-153-030 How are terms defined in this rule?

For the purposes of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

“Alternate” means an individual who:

- (1) May serve as an alternate commissioner of a board at the request of the board or the legislative authority or authorities of the county or counties;
- (2) Serves a board in a non-voting capacity;
- (3) Is not considered for the purpose of satisfying a quorum; and
- (4) Cannot take the place of a commissioner on a temporary basis.

Reason for change

This definition was revised to further clarify the limitations on an alternate’s participation in the business of a board but not in the record of decision.

“Application” means an application made on an ecology form identified as an Application for Change/Transfer to Water Right, form number 040-1-97 for a transfer of a water right, including those transfers proposed under authority of RCW 90.03.380, 90.03.390 and 90.44.100. A board may supplement the application with additional forms or requests for additional documentation. These forms and documentation become a part of the application.

“Board” means a water conservancy board pursuant to chapter 90.80 RCW.

“Bylaws” means the internal operating procedures, policies, or other guidance adopted by a board and designated as the board’s bylaws.

Reason for change

This definition was added to clarify the meaning of a term used within this rule.

“Commissioner” means an individual appointed to serve as a voting member on a water conservancy board through a written statement by the legislative authority or authorities of the county or counties.

“Consumptive use” means use of water whereby there is a diminishment of the water source.

“Director” means the director of the department of ecology.

“Ecology” means the department of ecology.

“Ecology regional office” means the water resources program at the ecology regional office designated to a board as the office where the board shall interact as identified within this chapter.

“Geographic area” means an area within the state of Washington in which an established board would have authority to process water right transfer applications. This area is identified by the legislative authority or authorities of the county or counties seeking to establish the water conservancy board. The area may be a single county, more than one county, a single water resource inventory area, or more than one water resource inventory area. If the identified geographic area contains all or part of more than one county, the counties involved must identify a “lead county” for certain administrative purposes.

“Lead county” means the county legislative authority with which ecology will communicate for administrative purposes in cases where a water conservancy board’s geographic area includes more than one county legislative authority.

“Non-water right holder” means, solely for the purpose of satisfying RCW 90.80.050(2) in regard to determining whether a potential water conservancy board commissioner is a “non-water right holder,” any party who:

- (1) Does not meet ~~any~~ of the criteria of a water right holder as defined in this section; or
- (2) Receives water solely through a water distributing entity.

Reason for change

This definition has been clarified to indicate that a “non-water right holder” is someone who meets none of the criteria of a water right holder in total rather than **any** particular part of the definition.

“Record of decision” means the written conclusion reached by a water conservancy board regarding a transfer application, with documentation of each board commissioner’s vote on the decision. The record of decision must be on a form provided by ecology and identified as a Record of Decision, form number 040-105.

“Report of examination” means the written explanation, factual findings, and analysis that support a board’s record of decision. The report of examination is an integral part of the record of decision. The report of examination must be on a form provided by ecology and identified as Water Conservancy Board Report of Examination, form number 040-106.

“Source” means the water body from which water is or would be diverted or withdrawn under an existing water right which an applicant has proposed to be transferred.

“Transfer” means a transfer, change, amendment, or other alteration of part or all of a water right, as authorized under RCW 90.03.380, 90.03.390 or 90.44.100.

“Trust water right” means any water right acquired by the state under chapter 90.38 RCW or chapter 90.42 RCW, for management in the state’s trust water rights program.

“Water conservancy board coordinator” means the person designated by the director or his or her designee to coordinate statewide water conservancy board activities, communication, and training, and to advocate for consistent statewide implementation of chapter 90.80 RCW and chapter 173-153 WAC.

“Water right holder” means, solely for the purpose of satisfying RCW 90.80.020(2)(d) and RCW 90.80.050(2) in regard to determining whether the qualifications of petitioners to create a board and a potential water conservancy board commissioner are “water right holders,” and as used within this rule, any individual who asserts that he or she has a water right and can provide appropriate documentation of a privately-owned water right which is appurtenant to the land that they individually or through marital community property own or in which they have a majority interest.

Reason for change

This change clarifies the definition of a water right holder throughout this rule. It also clarifies that a water right holder does not have to consider the interest of a spouse separately from their interests in qualifying as an owner of a water right.

WAC 173-153-040 How is a water conservancy board created?

All eligible entities identified in this section under (1)(a) are encouraged to consult with ecology when considering creation of a water conservancy board. In accordance with chapter 90.80 RCW, boards may have either three or five commissioners and must be established to serve an identified geographic area, as defined in WAC 173-153-030(8). A newly established board cannot include in the geographic area in which it will serve any area that overlaps with a geographic area served by an existing board.

- (1) Creation of a water conservancy board is accomplished by the following steps:
 - (a) A resolution or petition is proposed to or by the legislative authority or authorities of a county or counties;
 - (b) Public notice;
 - (c) Public hearing(s);
 - (d) Adoption of a resolution creating the board by the legislative authority or authorities of the county or counties;
 - (e) When a board is created by more than one county legislative authority, a lead county is designated;
 - (f) A petition is submitted to the director; and
 - (g) The director must approve the creation of a board.

Where is the resolution or petition calling for the creation of a board submitted?

- (2) A resolution or petition calling for creation of a water conservancy board must be submitted to the legislative authority or authorities of the county or counties in which the board would serve.

Who can initiate a petition calling for the creation of a board?

- (3) A resolution or petition may be initiated by the following entities:
- (a) The legislative authority or authorities of the county or counties which would be served by the board;
 - (b) The legislative authority of an irrigation district, a public utility district that operates a public water system, a reclamation district, a city operating a public water system, or a water-sewer district that operates a public water system;
 - (c) The governing body of a cooperative or mutual corporation that operates a public water system serving one hundred or more accounts;
 - (d) Five or more water right holders, in the geographic area which would be served by the board, who divert or withdraw water for a beneficial use, or whose nonuse of water is due to a sufficient cause or an exemption pursuant to RCW 90.14.140; or
 - (e) Any combination of the above.

What information must be included in the proposed resolution or petition calling for the creation of a board?

- (4) The resolution or petition must include:
- (a) A statement describing the need for the board;
 - (b) Proposed bylaws that will govern the operation of the board;
 - (c) Identification of the geographic area within which the board would serve; and
 - (d) A description of the proposed method(s) for funding the operation of the board.

What notice is given to the public regarding the proposed creation of a board?

- (5) A public notice must be published in a newspaper of general circulation in the county or, if the board would serve more than one county, a public notice must be published in a newspaper of general circulation in each county in which the board would serve. The notice(s) must be published not less than ten days and not more than thirty days before the date of a public hearing on the proposed creation of the board. The notice(s) shall describe the
- (a) Time;
 - (b) Date;
 - (c) Place;
 - (d) Purpose of the hearing; and
 - (e) Purpose of the board.

Notice must be sent to the ecology regional office at the time of publication of the public notice, and an effort shall be made to ensure that any watershed planning unit and Indian tribe with an interest in water rights in the area to be served by the board also receives the notice.

How many public hearings must be held for the creation of a board?

- (6) At least one public hearing on the proposed creation of the board must be held by the legislative authority of each county in which the board would serve.

What must be included in the adopted resolution which establishes a board?

(7) If the legislative authority or authorities of the county or counties decide to establish a board after the public hearing(s), a resolution must be adopted by the legislative authority or authorities of the county or counties, approving the creation of the board. The resolution must describe or include:

- (a) The need for the board;
- (b) The geographic area to be served by the board;
- (c) The method or methods which will be used to fund the board;
- (d) Whether the proposed board will consist of three or five commissioners;
- (e) The designated lead county if a board is proposed which would serve in more than one county; and
- (f) A finding that the creation of the board is in the public interest.

What is included in a petition to ecology for the creation of a board?

(8) The petition submitted to ecology to create the board must include the following:

- (a) A copy of the resolution or petition to or by the legislative authority or authorities of the county or counties calling for the creation of a board. If a board is proposed which would serve in more than one county, the resolution shall be provided by the lead county as designated under subsection (7)(e) of this section. If five petitioners meeting the definition of a water right holders who divert or withdraw water for beneficial use, or whose nonuse of water is due to a sufficient cause or exempt pursuant to RCW 90.14.140, in the county or counties in which the board would serve initiated the petition, the petition must also include the names and addresses of the petitioners;

Reason for change

This language incorporates by reference the definition of a “water right holder” as provided within this rule, rather than including the language of the definition.

- (b) A summary of the public testimony presented during the public hearing(s) conducted by the legislative authority or authorities of the county or counties in response to the resolution or petition to create a board. The summary shall be clearly identified and include the date of the hearing;

- (c) A copy of the resolution adopted by the legislative authority or authorities of the county or counties approving the creation of a water conservancy board. The resolution must include all elements described in subsection (7) of this section; and

- (d) A copy of the board's proposed bylaws.

What is the process for the director to approve or deny the creation of a water conservancy board?

(9) Upon submission to the water conservancy board coordinator of the required documentation pursuant to subsection (8) of this section, the director will determine whether the

creation of a board will further the purposes of the law and be in the public interest. The public interest includes, but is not limited to, whether ecology has sufficient staffing resources to provide the necessary training, monitoring, and technical assistance to the board and to make timely responses to the board's records of decision.

(10) The director's determination regarding creation of the board shall be made within forty-five days of receiving all items listed in subsection (8) of this section.

(11) If creation of a board is approved, ecology will include in its notice of approval any unique conditions or provisions under which the approval is made, if any, and a description of the initial training requirements for board commissioners as outlined in WAC 173-153-050.

WAC 173-153-042 How are water conservancy board commissioners appointed and the length of their terms determined?

How do counties notify ecology of board commissioner's appointments and terms?

(1) Upon approval of a new board by ecology, or upon approval of restructuring the number of commissioners on an existing board, the legislative authority of the county or the lead county shall submit to ecology's water conservancy board coordinator a written statement identifying the individuals appointed to the board. The statement must include:

(a) The name, mailing address, and phone number or other contact information of the commissioners;

(b) The terms of office of the commissioners; these terms of office must be staggered as described in RCW 90.80.050(1).

~~What is the responsibility of the county or lead county~~ What happens when a board commissioner's term expires or a board position becomes vacant?

Reason for change

This revision simplifies the heading and better relates it to the rule content.

(2) Upon the expiration of a board commissioner's term, the appropriate legislative authority or authorities of the county or counties shall either:

(a) Reappoint the incumbent commissioner; or

(b) Appoint a new commissioner to the board. A written statement including the information as described in subsection (1) of this section shall be submitted to ecology's water conservancy board coordinator.

(3) In the event a board position becomes vacant, the legislative authority or authorities of the county or counties shall appoint a new commissioner in accordance with RCW 90.80.050(2). A statement as described in subsection (1) of this section must be submitted to ecology's water conservancy board coordinator. The new commissioner shall fill the vacancy only for the remainder of the unexpired term and, upon completion of the unexpired term, may be reappointed, as described in subsection (2) of this section, to serve a full six-year term.

What are the terms of board commissioners?

(4) Initial terms of commissioners appointed to a newly created board shall be staggered as described in RCW 90.80.050.

(5) Upon the expiration of the initially appointed commissioners' terms, all subsequent appointments shall be for six year terms.

(6) The initial terms of office of board commissioners on a restructured board shall be staggered as set forth in RCW 90.80.050. As each of the commissioners' term of office expires, newly or reappointed commissioners shall all be appointed to six-year terms. However, in order to maintain staggered terms, regardless of the date on which such commissioners may be appointed or reappointed, the expiration of all commissioners' terms shall be the same day and month as the expiration of the term of office of the first commissioner appointed to the board, varying only in the year of expiration.

How would an appointed board member resign the position?

(7) A board commissioner may resign the board position by submitting a letter of resignation to the appointing county or counties. A copy of the resignation letter must be submitted to the water conservancy board coordinator by either the resigning board member or by the board.

Reason for change

This addition provides a consistent process for the resignation of a commissioner as it relates to this section on board commissioner's terms, and provides notice to the county and Ecology of vacancies.

What is the responsibility of a board in notification of board vacancies?

(8) It is the responsibility of the board to notify the appointing county(ies) and the water conservancy board coordinator that there is a board commissioner vacancy.

(9) The appointing county(ies) and the board will determine and conduct a process to fill the commissioner vacancy in accordance with subsection (3) of this section.

Reason for change

This addition addresses how notice is given to counties and Ecology should any vacancy occur on the board. The language adopts the same process for filling vacant positions on the board that is used for filling expired terms.

WAC 173-153-043 How can a board's authority be revoked or the board dissolved?

Revocation:

(1)(a) Ecology may revoke legal authority of a board to make any decisions regarding water right transfers for reasons which include, but are not limited to, the following:

- (i) If the board fails to issue a record of decision for a period of two years or more from the date the board was approved or from the date that the last record of decision was issued; or
 - (ii) If the board demonstrates a pattern of ignoring statutory and regulatory requirements in its processing of applications or in its records of decision; or
 - (iii) If requested by the legislative authority or authorities of the county or counties that called for the board's formation.
- (b) The board will be allowed thirty days to respond to any revocation before it becomes effective. Ecology may reverse the revocation based upon the board response.

Dissolution:

- (2) (a) The legislative authority of a county or lead county may adopt a resolution to dissolve a board.
- (b) Ecology may petition the legislative authority of the county or lead county, with a copy to the board, for dissolution of a board.
- (c) Upon resolution by the legislative authority of the county or lead county to approve the dissolution of a board, the board will be allowed thirty days after the date of the resolution to respond to the petition for dissolution.
- (d) The resolution by a county or lead county to approve the dissolution of a board will become effective thirty days after adoption of the resolution.
- (c) The legislative authority of the county or lead county may reverse the dissolution based upon the board's response.

WAC 173-153-045 What is the process for restructuring a board?

- (1) A board may be restructured as to the number of commissioners on the board and the geographic area of its jurisdiction.
- (2) A board, a county legislative authority, or a lead county legislative authority may request to restructure an existing board within its geographical jurisdiction. It is suggested that the legislative authority or authorities of the county or counties and the existing board communicate and work cooperatively during the board restructuring process.
- (3) The legislative authority or authorities of the pertinent county or counties shall hold a public hearing and adopt a resolution including:
- (a) The manner of restructuring and the need for restructuring the board;
 - (b) The number of commissioners to serve on the board;
 - (c) The proposed geographic area of jurisdiction of the board;
 - (d) If the proposed geographic area of jurisdiction is restructured to include more than one county legislative authority, the legislative authorities of each county included within the restructuring shall identify a lead county; and
 - (e) A summary of the public testimony presented during the public hearing(s) conducted by the legislative authority or authorities of the county or counties in response to the resolution to restructure a board. The summary shall be clearly identified and include the date of the hearing.
- (4) Upon submission to the water conservancy board coordinator of the required documentation pursuant to subsection (3) of this section, the director will determine whether the restructuring of a board will further the purposes of the law and be in the public interest as described in WAC 173-153-040(10).

(5) The director's determination to approve or deny restructuring of the board shall be made within forty-five days of receiving all items listed in subsection (3) of this section.

(6) If the board restructuring is approved, ecology will include in its notice of approval any unique conditions or provisions under which the approval is made, if any, and shall identify the date the restructuring of the board will take effect. The director shall also identify any additional training required of the board if it assumes jurisdiction of a new geographic area.

WAC 173-153-050 What are the training requirements for board commissioners?

What training is required for newly appointed board commissioners?

(1) Every commissioner of a board shall complete a training program provided by ecology before participating in any decision concerning a water right transfer application being considered by the board. Attendance at trainings for new commissioners shall be limited to board commissioners, their administrative staff, board alternates, and individuals providing training. Due to the complexity of the training and the need to provide adequate time to focus on questions from board commissioners, the number of participants attending each training session shall be left to the discretion of the water conservancy board coordinator. Training for new commissioners shall be held at least once in the spring and once in the fall depending on, but not limited to:

(a) Whether ecology has sufficient staffing resources to provide the necessary training; and/or

(b) Whether there are sufficient numbers of board commissioners needing training.

(2) Successful completion of the training program will consist of:

(a) Receiving at least thirty-two hours of instruction, from or sponsored by ecology, regarding hydrology, state water law, state water policy, administrative and judicial case law developments, field practices, evaluation of existing water rights, and practical experience working with ecology staff on applications for water right transfers; and

(b) Demonstrating an understanding of course materials during training, and demonstrating sufficient mastery of the training curriculum through an examination administered by an ecology employee upon completion of training.

(3) If a board is restructured to modify the geographic area, the director may require additional training of all board commissioners;

(4) Upon a water conservancy board commissioner's or alternate's successful completion of the training, ecology will certify such completion in writing to the county or lead county of the geographic area served by the board. A copy of this letter shall also be sent to the board.

Are there continuing education requirements for board commissioners?

(5) After completing one year of service on a water conservancy board, each following year prior to the anniversary of their appointment to the board, commissioners must complete an additional eight hours of continuing education provided or approved by ecology. Each commissioner shall complete the minimum continuing education requirement before participating in any decision concerning a water right transfer application being considered by a board. Continuing education may include, but is not limited to, readings, a seminar or conference, or field experience regarding, but not necessarily limited to, subjects such as state

water law, state water policy, administrative and judicial case law developments, field practices, evaluation of existing water rights, and hydrology.

(6) Ecology may, at its discretion, and in response to requests, provide training periodically. Ecology may also combine training for more than one board.

How can a board commissioner receive credit for continuing education not provided or sponsored by ecology?

(7) Continuing education training requirements under subsection (5) of this section may be fulfilled through training not provided or sponsored by ecology. However, such training will be accepted only if it is reported to ecology on a form provided by ecology and identified as the Water Conservancy Board Training Credit Request Form, form number 040-104, and approved by ecology as appropriate training.

(8) Board commissioners are encouraged to report to the water conservancy board coordinator all relevant continuing education received.

WAC 173-153-060 What is the scope of authority of a water conservancy board?

(1) A board has authority to:

(a) Evaluate water right transfer applications and issue records of decision and reports of examination for water right transfers;

(b) Act upon the transfer of water rights to the state trust water right program, when doing so is associated with an application to transfer a water right. Boards are encouraged to immediately contact ecology for technical assistance when acting on changes involving trust water rights;

(c) Establish and maintain a water right transfer information exchange program regarding the sale and lease of water rights; and

(d) Perform other activities as may be authorized under chapter 90.80 RCW, subject to other applicable state laws and regulations.

How does a board process a water right change application?

(2) A board may accept for processing an application to transfer a surface or ground water right if the water right is currently diverted, withdrawn, or used within or, if approved, would be diverted, withdrawn, or used within the boundaries of the geographic area in which the board has jurisdiction; exceptions to this are stated in section (7) of this section. The application may be for a permanent or temporary use.

(a) The board should promptly request from the department a copy of the water right file related to the water right transfer application filed with the board. The department will comply with the request at no charge to the board.

Reason for change

This change provides guidance to the board that the record of a water right being transferred should be obtained from Ecology early in the process and to direct that such record will be provided by Ecology without fee or charge to the board.

(ab) The board shall investigate the application and determine whether the proposal should be approved or denied and, if approved, under what conditions, if any, the approval should be granted.

(bc) As part of the process described in subsection (2)(ab) of this subsection, boards should determine whether a watershed planning unit is involved in planning related to the source of water that would be affected by the application being considered. If so, the board should notify the planning unit of the application, and consider comments from the watershed planning unit prior to issuing its record of decision.

(3) Decisions on applications must be made by a board in the order in which the applications were originally ~~filed with~~ accepted by the board. Exceptions are outlined in RCW 90.03.380 and chapter 173-152 WAC.

Reason for change

This language clarifies the point at which an applicant can consider his/her application “in line” for processing by the board.

(4) Boards must take into consideration the ~~possible~~ effect of a proposed transfer on the availability of water for, or possible impairment of, previously filed transfer applications for water from the same source regardless of the order in which applications are processed. This includes any applications for transfers filed with ecology or any other water conservancy board. Ecology will cooperate with boards to resolve any problems associated with conflicting applications.

Reason for change

To limit consideration of effects to those that are relevant to the requirements of law and rule.

(5) Neither the annual quantity nor the instantaneous quantity of water ~~appropriated under tentatively determined by the board to be associated with~~ a water right may be ~~expanded~~ increased. ~~For agricultural use,~~ Uses may not be added and the acreage irrigated may not be expanded, except in the circumstances allowed in RCW 90.03.380, in which the annual consumptive use under the water right is not increased.

Reason for change

The subsection has been rewritten to better describe the circumstances under which a water right may add irrigated acres or uses and to describe the prohibition regarding increasing water quantities.

(6) As described in RCW 90.66.065, under a family farm permit, surplus waters made available through water-use efficiency may, subject to laws including WAC 173-152-110, be transferred to any purpose of use that is a beneficial use of water.

(7) Any water right or portion of a water right that has not previously been put to actual beneficial use cannot be transferred, except as authorized by RCW 90.44.100, ~~limited only to change to place of use and point of withdrawal and pursuant to~~ or RCW 90.03.395 and RCW 90.03.397.

Reason for change

This simplified the statement without substantive change in meaning.

Where can an applicant file a water right change application?

(8) If a board has been established in an area where an applicant wishes to apply for a water right transfer, applicants have the option of applying either directly to ecology or to a board.

What happens if two boards have overlapping jurisdictions?

(9) Overlapping jurisdiction occurs because boards may transfer rights into and out of their geographic area. Water conservancy boards may negotiate inter-board agreements to determine which board will act in instances of overlapping jurisdiction. Boards are advised to research applicable law, including chapter 39.34 RCW, the Interlocal Cooperation Act, prior to entering into any agreement. Any such agreement must be filed with the water conservancy board coordinator within fifteen days of its effective date.

Reason for change

This language points out to boards that there may be state law addressing agreements between public agencies.

(10) In circumstances in which more than one board may have authority to process water right transfers in a particular area, but the boards have not negotiated an inter-board agreement as specified in subsection (9) of this section, an applicant may file an application with either board. For example, if one board has authority to transfer the applicant's water right out of its jurisdiction, while another board has authority to transfer the water right into its jurisdiction, the applicant can apply to either board.

WAC 173-153-070 What does an applicant need to know about filing an application for transfer of a water right?

How are applications accepted for processing by a board?

(1) Ecology will provide water right transfer application forms and applicant instructions to boards, which will make them available to the public upon request. All applications to a board must be made using the water right application for change/transfer form supplied by ecology, form number 040-1-97.

(2) Boards and ecology shall inform all applicants that the decision to file a transfer application with a board rather than directly with ecology is solely at the discretion of the applicant, provided a board is active in the area addressed by the transfer application.

(3) A water right transfer application is considered filed when it is received by a board commissioner or a designated administrative support person for a board at the location designated by the board.

Reason for change

This change clarifies that boards need not consider applications that are filed at locations other than that location designated by the board for the purpose of filing applications.

(4) A separate application must be filed for each water right that is proposed to be transferred. ~~may propose the transfer of no more than one water right.~~

Reason for change

This section has been reworded to clarify the intent of the rule.

(5) A majority vote of a quorum of a board is required to accept ~~an~~ complete application for processing.

Reason for change

To clarify that applications must be complete to the satisfaction of the board prior to acceptance.

What must a complete application include?

(6) Boards shall ~~ensure~~ require that applications submitted directly to them are complete and legible. A complete application shall:

(a) Include the minimum ten-dollar examination fee required by RCW 90.03.470(1).

~~(b) Include any fees that may be established and charged by a board in accordance with RCW 90.80.060(2).~~

~~(e)~~ (b) Contain the information requested on the application form as applicable.

~~(d)~~ (c) Be accompanied by such maps and drawings, in duplicate, and such other data or fees, as may be required by the board. Such accompanying data shall be considered as part of the application as described in RCW 90.03.260.

Reason for change

This clarifies the responsibility of the board toward a complete application, simplifies the language of the rule and allows boards to determine whether satisfactory fees required by the board have been submitted.

(7) A board may request that an applicant provide additional information as part of the application by requiring, for example, that the applicant complete additional forms supplemental to the standard application or that applicant prepare and/or provide specific reports regarding aspects of the application.

How is an application number assigned to a water right transfer application filed with a board?

(8) The board shall assign a unique number to a water right transfer application upon acceptance of the application by the board.

(9) The number assigned by the board to the water right transfer application shall be written in ink within the space provided on the application for the application number.

(10) The water right transfer application, public notice, record of decision, and report of examination produced by the board in processing the application shall reference the board-assigned number.

(11) The unique application number is assigned in accordance with the following three part format:

(a) The first part of the board-assigned application number will identify the board that has accepted the application as follows:

(i) Boards having jurisdiction within a geographic area that is based upon a county boundary or the boundary of multiple counties will begin all application numbers with the first four letters of the name of the county or of the lead county. For example, a board with jurisdiction within Kittitas County will begin each application number with the letters “KITT”.

(ii) Boards that have jurisdiction within a geographic area that is based upon a Water Resource Inventory Area (WRIA) or multiple WRIsAs will use the number of the WRIA of jurisdiction or, in the case of multi-WRIA boards, the WRIA of jurisdiction associated with the water right.

(b) The second part of the board-assigned application number will be the last two digits of the year in which the application was accepted. For example, applications that are accepted during the year 2003 will use the digits “03”.

(c) The third part of the board-assigned application number will be a sequential two-digit number beginning with the number “01” for the first application accepted after the effective date of this rule and beginning with number “01” for the first application accepted by the board during each subsequent calendar year.

(d) A dash (-) will be used to separate the three parts of the application number as provided within (a), (b), and (c) of this subsection. For instance, the first application accepted by the Kittitas County water conservancy board during the year 2003 will be assigned number KITT-03-01.

Are applications before a board considered dual-filed with ecology?

(12) The board must forward the complete original application form upon which the board has legibly written the board-assigned application number in the space provided for that purpose and the statutory state application fee to the ecology regional office within five business days of the date the board accepts the application for processing.

(13) Within thirty business days from the date ecology receives the application from the board, ecology will assign a state water right change application number to the application and inform the board of the assigned number. The number assigned by ecology will be used for Ecology's internal administrative purposes, including the recording of the application within the state water right record. The ecology-assigned number need not be used by the board in processing the application, including within the public notice.

(14) Ecology will open and maintain a file regarding the application for permanent recordkeeping. Ecology will inform the applicant if additional state fees are due. The board may not continue processing the application until if notified by ecology that all statutorily required application fees are due. have been paid. Within three days of receipt of such fees, ecology shall inform the board of satisfaction of fee payment regarding any application in which ecology notified the board of outstanding fees.

Reason for change

This amended language simplifies the process for boards and requirements for notification. It also provides notice to a board when it may continue processing an application where additional fees were required.

(15) Upon acceptance of the application by ecology, the application is considered to be filed with both the board and ecology. However, ecology shall not act on the application unless it is notified by the board that the board has declined to process the application and upon receiving a written request from the applicant that ecology process the application.

How can responsibility for processing an application previously filed with ecology be transferred to a board?

(16) If an applicant makes a request to a board that an application previously filed with ecology be considered for processing by that board, the board may request that ecology forward a copy of the application file to the board. Ecology will comply with the request and the original application will continue to be on file and maintained at ecology but will not be considered as part of ecology's active workload while the application is being processed by the board.

(17) The board shall notify ecology if it accepts the application for processing. The board will assign an application number in accordance with subsection (10) of this section and inform the ecology regional office in writing of the board's application number within five business days of accepting the application.

Can a board decide not to accept an application for processing, or decide to discontinue processing an application?

(18) By a majority vote of a quorum of a board, a board may decline to process or may discontinue ~~to continue~~ processing an application at any time. The board must inform the applicant of its decision in writing within fourteen business days of making the decision. The board must, at the same time, send the ecology regional office a copy of the board's written notice to the applicant. If the basis of the board's decision to decline processing the application is not sufficiently clear from the written notice, and the applicant filed a written request that ecology process the application, ecology may request a further written explanation regarding the board's decision not to process or finish processing the application. The board must provide this additional written explanation within ~~fifteen~~ thirty days of ecology's request.

Reason for change

This amendment clarifies the authority of a board to discontinue processing an application. The change also provides a realistic time frame for a board to respond to a request for additional information.

(19) If a board declines to process or ~~to discontinue~~ processing an application, it must return the application to the applicant and must inform the applicant that the application may be filed with ecology and advise the applicant of the appropriate ecology office where the application should be filed.

Reason for Change

The text has been reworded to clarify the intent of the rule and to reflect statutory language.

Who must receive copies of applications being processed by a board?

(20) Boards must ensure that copies of applications accepted by them for processing are provided to interested parties in compliance with existing laws, ~~as well as with current ecology memoranda of understanding, policies and other guidance~~. To assist the boards in this, ecology will provide a list of ~~potentially interested~~ parties which have identified themselves to ecology as interested in the geographic area of the board. Additional interested parties, including Indian tribes, may request copies of applications from boards.

Reason for change

This language makes the rule analogous with the statutes and clarifies that boards must comply with the requirements of law in providing copies. Ecology policies will be covered in training of board commissioners.

(21) A ~~copy~~ notice of each application accepted by a board shall be provided to any Indian tribe that has reservation lands or trust lands contiguous with or encompassed within the geographic area of the board's jurisdiction.

Reason for change

The word "copy" was changed to "notice" to reflect the wording of RCW 90.80.070(3).

WAC 173-153-080 What public notice is given on a water right transfer application before a board?

(1) Upon acceptance by a board of a water right transfer application in accordance with WAC 173-153-070(2), the board shall publish a public notice of the proposed water right transfer in accordance with RCW 90.03.280. This notice must be published at least once a week for two consecutive weeks in the legal notice section of a newspaper of general circulation in the project area of the county or counties where the application proposes to use, divert, withdraw and/or store water. Ecology must provide the board with a list of newspapers generally acceptable for the publication of public notices ~~this purpose~~. The board should consider publishing an additional public notice in other areas that could be affected by the transfer proposal. The public notice of each individual application for transfer must include the following information, in the following order:

Reason for change

This language clarifies that ecology intends to provide a list to boards periodically and not in response to each application.

- (a) The applicant's name and city or county of residence;
- (b) The board's assigned water right change application number.
- (c) The water right priority date;
- (d) A description of the water right to be transferred, including the number of any water right document, that embodies the water right such as a permit, certificate or claim filed under chapter 90.14 RCW, the location of the point of diversion or withdrawal; the place of use; the purpose(s) of use; the period of use; if for irrigation purposes, the total acres irrigated; and the instantaneous rate and annual quantities as stated on the water right document;
- (e) A description of the proposed transfer(s) to be made, including, when applicable, the proposed location of point(s) of diversion or withdrawal; the proposed place(s) of use; the proposed purpose(s) of use; if for irrigation purposes, the total number of acres to be irrigated; and the instantaneous rate and annual quantities of water associated with the proposed water right transfer including the description of a transfer that includes only a portion of a water right;
- (f) The manner and time limit for filing protests with ecology under RCW 90.03.470 and WAC 508-12-170; and

(g) The manner for providing written and oral comments or other information to the board, including the board's mailing address and the place, date, and time of any public meeting or hearing scheduled to consider, discuss, or decide the application.

Reason for change

This language notes that there may be various activities of a board that may provide additional opportunities for comment on an application.

(2) The board may require the applicant to review and confirm the information in the public notice prior to publication. If the board does so, the applicant assumes responsibility for any errors contained in the description of the application published in the public notice.

(3) The board must send a copy of the public notice to the ecology regional office at the same time the public notice is submitted for publication.

(4) Before acting on an application, the board must first receive a notarized affidavit of publication from each newspaper in which the public notice regarding the application was published, and the board must verify that publication occurred correctly. The board must also allow at least thirty days following the last date of publication of the notice, to allow for protests or objections to be filed with ecology before the board issues a record of decision.

(5) The public notice must be republished in all newspapers of original publication when an applicant substantively amends an application for a transfer of a water right subsequent to publication of the notice, or when a substantive error or omission occurs in the publication. All parties who were sent the original application and/or public notice as required by WAC 173-153-070(20) must be sent corrected copies of any amended transfer application, if necessary to keep ecology and all interested parties accurately informed. For the purposes of this subsection, the term "substantive error in publication" refers to, but is not limited to, any item identified in subsection (1) of this section that is omitted from or inadequately characterized in the public notice. ~~All parties who were sent the original application and/or public notice must be sent corrected copies of any amended transfer application.~~

Reason for change

This subsection was reworded for clarity and in recognition that substantive errors could occur in publication while accurate information was distributed in accordance with WAC 173-153-070(20).

WAC 173-153-090 How can protests and letters of concern or support on a water right transfer application be submitted to a board?

Where is a protest submitted regarding a water right transfer application before a board?

(1) A protest against granting a proposed water right change or transfer, as identified in RCW 90.03.470(12), must be received by ecology, with the statutory two-dollar protest fee, within thirty days of the last date of publication of the public notice.

(2) Ecology shall provide a copy of the protest to the appropriate board within five days of receipt of the protest.

(3) In accordance with WAC 508-12-170 and WAC 508-12-220, a board will thoroughly investigate all pertinent protests of a transfer application before the board.

(4) Ecology shall consider all pertinent protests during its review of the board's record of decision on the application.

(5) Persons inquiring of the board or ecology regarding protest procedures shall be directed to file the protest with ecology.

(6) A ~~B~~boards must immediately forward to ecology any protests ~~they~~ it receives including the two-dollar protest fee.

Reason for change

This subsection has been reworded for clarity.

What is included in a valid protest?

(7) A protest must include:

- (a) The name, address and phone number (if any) of the protesting party;
- (b) Clear identification of the transfer application being protested; and
- (c) A statement identifying the basis for the protest.
- (d) The statutory two-dollar protest fee.

What is the difference between a protest and a letter of concern or support?

(8) Any protest received more than thirty days after the last date of publication of the public notice, or without the required fee, will be filed as a letter of concern.

(9) A letter of support is any comment addressing the benefit of the project proposed in an application.

(10) A party who provides a letter of concern or support regarding an application to a water conservancy board is not considered to be a protesting party unless the party has also filed a valid protest with ecology in compliance with this section.

Will a protest or letter of concern be considered?

(11) Boards must accept and consider any oral or written comments or protests in evaluating an application, in accordance with chapter 90.80 RCW, this chapter, and board bylaws.

Reason for change

This language was added to clarify the intent of the rule.

WAC 173-153-100 How does a water conservancy board operate?

(1) Water conservancy board meetings must be in compliance with the Open Public Meetings Act, chapter 42.30 RCW. Additionally, minutes of the meetings must be recorded pursuant to chapter 42.32 RCW and such minutes must be made available for public review upon request.

(2) At the beginning of any meeting or hearing in which any application to change or transfer a water right is to be discussed, or upon which a decision is to be made, those individuals in attendance must be informed that any known allegations of conflict of interest must be expressed in that meeting or hearing or their right to do so may be forfeited in accordance with RCW 90.80.120(2)(a).

(3) A board may adopt and amend its own bylaws through which board meetings, operations, and processes are governed.

How can a board be contacted by the public?

(4) Each board must designate at least one primary contact person for communicating with ecology and other entities. The board must inform the water conservancy board coordinator of:

- (a) The name of the primary contact;
- (b) How to contact that person; and
- (c) Any changes to the contact information for the primary contact of the board.

(5) Boards are subject to the Public Records Act, chapter 42.17 RCW and as described in RCW 90.80.135.

WAC 173-153-110 What is involved in the examination of an application before a board?

(1) Boards shall base their records of decision and reports of examination regarding a transfer application on applicable state laws and regulations. In addition to specific water law, boards must also consult and consider other relevant state laws, including, but not limited to, the Growth Management Act (chapter 36.70A RCW).

(2) Generally, a board should conduct a field examination of the site(s) identified in the transfer application, and clarify any unclear information by contacting and discussing the information with the applicant or other appropriate persons.

(3) All relevant information must be identified, discussed, and considered in the board's examination. This may include the need for a board to collect pertinent detailed hydrological or hydrogeological information regarding the site(s) involved in the proposal. Any person providing an engineering, hydrologic, geologic and/or hydrogeological analysis on behalf of an applicant with an application before a board must be licensed in accordance with chapter 18.43 RCW or chapter 18.220 RCW, as applicable. The analysis must be certified by the individual's professional stamp.

(4) A board may require an applicant to provide additional information at the applicant's expense, if that information is necessary to render an adequately informed record of decision on an application.

How are comments and protests considered during the examination of the water right transfer application?

(5) Boards may also request that commenters or protestors provide additional information regarding their comments if such information is necessary to render an adequately informed record of decision on an application. Boards may also discuss the concerns raised in comments and protests with the persons who filed them.

(6) Boards must consider all comments and protests received about a pending application, whether or not additional information is provided by the protestor or commenter.

(7) Ecology, as is the case with any public agency, may provide formal written or oral comments regarding the application under discussion at a public meeting of the board. However, if ecology does provide formal comments in the context of a public meeting, the comments shall not be taken as giving either technical assistance or direction to the board, any more than any other comments would be so considered.

What other entities ~~must~~ should be consulted when a board examines an application?

(8) When public interest applies to the application evaluation or when there may be existing rights that could be impaired, boards shall determine whether an Indian tribe, watershed planning unit, or other governmental body is directly involved in planning or water management related to the source of water that would be affected by the application. If this is found to be the case, the board ~~shall~~ should consult the tribe, watershed planning unit, or other governmental body in the board's effort to obtain information concerning the application.

Reason for change

This language allows boards discretion in determining the need to consult. It also provides that consultation to planning groups pertains to applicable situations.

What other information must ~~the~~ a board consider in ~~their~~ its examination of the application?

Reason for change

This language was modified for grammar and clarity.

(9) Boards must evaluate an application, including all information obtained by the board that is associated with the application, and determine whether or not the transfer as proposed is in accordance with applicable state laws and regulations. The board must also make a tentative determination as to the extent and validity of the water right proposed to be transferred, as well as whether the transfer can be made without injury or detriment to existing rights. The board must evaluate a transfer proposal pursuant to RCW 90.44.100 as to whether the proposed transfer is detrimental to the public interest. Public interest shall not be considered when deciding whether to grant an application for change pursuant to RCW 90.03.380 exclusively.

(10) Boards shall ensure that the requirements of the State Environmental Policy Act (SEPA), chapter 43.21C RCW, and the SEPA rules, chapter 197-11 WAC, have been met before finalizing a record of decision. If a board concludes it is appropriate under WAC 197-11-922 through 197-11-944, the board may be the lead agency for SEPA compliance.

(11) A board shall consult with ecology if it encounters new, unusual, or controversial issues in the course of examining an application. Ecology will provide assistance as to how to proceed in accordance with existing state laws, rules, and current ecology policies and administrative practices.

(12) When a board receives an application to transfer a water right that is located in an area subject to an ongoing general water rights adjudication process, the board shall consult with ecology prior to taking any action on ~~processing~~ the application. Ecology will seek guidance from the pertinent superior court regarding the court's role in administering the water rights that are subject to the adjudication. Ecology shall then advise the board on whether and how the board may process ~~address~~ the applications.

Reason for change

The language was clarified to give better direction to boards on when to consult with Ecology.

WAC 173-153-120 What assistance is available to water conservancy boards?

(1) The director, or his or her designee, shall assign a representative of ecology to be available to provide technical assistance to each board as provided in RCW 90.80.055(1)(d).

(2) Upon request by a board, an ecology representative will provide technical assistance as the board:

- (a) Reviews applications for formal acceptance;
- (b) Prepares draft records of decision and reports of examination;
- (c) Considers technical factors; and
- (d) Considers legal factors affecting the board's development of a record of decision.

(3) A board may request and accept additional technical assistance from ecology.

(4) A board may also request and accept assistance and support from the government or governments of the county or counties in which it operates, as well as from other interested parties.

(5) Ecology recognizes that boards are independent entities with the legal right to make records of decision on water right transfer applications without seeking assistance from ecology. However, should a board desire assistance from ecology in processing an application or regarding its administrative functions, ecology will provide technical assistance upon request of the board. This technical assistance may address issues involved in application processing, including procedural requirements and administrative functions, and can include specific information regarding approaches to resolving particular issues. However, in deference to the independent status of boards, such technical assistance shall be solely in the form of guidance and shall not dictate or otherwise direct any board to reach a specific conclusion regarding any aspect of application processing or of a board's administrative functions.

(6) Technical assistance and training provided to a board is not subject to the open public meetings act.

WAC 173-153-130 How are records of decision and reports of examination made by a water conservancy board?

(1) ~~A~~Records of decision and reports of examination ~~is~~ are adopted by a majority vote of a board, ~~as defined in~~ pursuant to RCW 90.80.070(4). ~~The~~ A board's record of decision and report of examination must be in writing, and the record of decision and report of examination become part of the public record.

Reason for change

This subsection has been reworded for clarity.

(2) When a board proposes to deny an application, in whole or in part, the board must issue to both the applicant and ecology a record of decision and report of examination denying the transfer, or a portion of the transfer, subject to review and final determination by ecology.

(3) When a board proposes to approve an application, the board must issue to both the applicant and ecology a record of decision and a report of examination approving the transfer, subject to review and final approval by ecology.

What is included in a record of decision?

(4) The record of decision must be prepared on a form provided by ecology and identified as the Record of Decision, form number 040-105, and must include the conclusion of the board as to whether the application is denied or approved and a record of the individual vote or abstention of each participating commissioner or that a commissioner has recused him or herself.

What is included in a report of examination?

(5) It is the responsibility of the water conservancy board to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination.

Reason for change

This clarifies that only relevant issues must be thoroughly evaluated.

(6) The report of examination will consist of a form provided by ecology and identified as Water Conservancy Board Report of Examination, form number 040-106, documenting and summarizing the basic facts associated with the decision. This shall include:

(a) Within a section entitled "background":

(i) A description of the water right proposed for transfer, including the board-assigned water right change application number, and the board's tentative determination as to the validity

and quantification of the right, as well as the historical water use information that was considered by the board;

(ii) An explanation of how the board complied with the State Environmental Policy Act; and

(iii) A description of any previous change decisions associated with the water right.

(b) Within a section entitled "comments and protests": A description of any protests, and written or oral comments, including:

(i) The names and addresses of the protestors or commenters;

(ii) A description of the issues raised; and

(iii) The board's analysis regarding each issue raised.

(c) Within a section entitled "investigation":

(i) A description of the project proposed by the applicant, including any issues related to development, such as the applicant's proposed development schedule and an analysis of the effect of the proposed transfer on other water rights, pending applications for changes or transfers, and instream flows established under state law;

(ii) A narrative description of any other water rights or other water uses associated with both the current and proposed place of use and an explanation of how those other rights or uses will be exercised in conjunction with the right proposed to be transferred;

(iii) If the proposed transfer is authorized under RCW 90.44.100, an analysis of the transfer as to whether it is detrimental to the public interest, including impacts on any watershed planning activity. Public interest shall not be considered if the proposed transfer is authorized pursuant to RCW 90.03.380 exclusively;

(iv) Any information indicating that an existing water right or portion of a water right has been relinquished or abandoned due to nonuse and the basis for the determination;

(v) A description of the results of any geologic, hydrogeologic, or other scientific investigations that were considered by the board and how this information contributed to the board's conclusions.

(d) Within a section entitled "conclusions": A list of conclusions that the board drew from the information compiled regarding the transfer proposal. Conclusions must, at a minimum, describe:

(i) Whether, and to what extent, a valid water right exists;

(ii) Any relinquishment or abandonment of the water right associated with the water right transfer application as discussed in subsection (6)(d)(i) of this section;

(iii) The result, as adopted by the board, of any hydraulic analysis done related to the proposed water right transfer;

(iv) The board's conclusions of issues raised by any comments and protests received;

(v) Whether the transfer proposal will impair existing rights of others; and

(vi) If the proposed transfer is authorized pursuant to RCW 90.44.100, whether it is detrimental to the public interest. Public interest shall not be considered if the proposed transfer is authorized pursuant to RCW 90.03.380 exclusively;

(e) Within a section entitled "decision": A complete description of the board's decision, fully and comprehensively addressing the entire application proposal;

(f) Within a section entitled "provisions":

(i) Any conditions and limitations recommended as part of an approved transfer, and/or any other corrective action necessary to maintain the water use in compliance with state laws and regulations;

(ii) Any requirement to mitigate adverse effects of the project.. Mitigation may be proposed by the applicant or the board and be required in the board's decision; and

(iii) A schedule for development and completion of the water right transfer, if approved in part or in whole, that includes a definite date for completion of the transfer and application of the water to an authorized beneficial use.

(7) Ecology may request additional information from the applicant or water conservancy board regarding the application and the board's decision, in addition to the requirements of subsection (6) of this section.

(8) A board's record of decision must clearly state that the applicant is not permitted to proceed to act on the proposal until ecology makes a final decision affirming, in whole or in part, the board's recommendation. However, if ecology does not act on a board's recommendation within the time frame established in RCW 90.80.080, the applicant is allowed to initiate the water right transfer pursuant to the boards record of decision after that period of time has expired. It is advised that the applicant not proceed until the appeal period of ecology's decision is complete, in compliance with WAC 173-153-180.

WAC 173-153-140 What is the process for notifying parties of a record of decision and report of examination?

Who is notified of a board's record of decision and report of examination?

(1) Ecology shall identify to all boards the ecology regional office designated for receipt of each board's records of decision. Boards shall hand deliver or send by mail records of decision and reports of examination to:

- (a) The applicant;
- (b) The ecology regional office;
- (c) Any person who protested the transfer;
- (d) Any person who requested notice of the board's record of decision;
- (e) Any tribe with reservation or trust lands contiguous with or wholly or partly within the area of jurisdiction of the board; and
- (f) Any commenting agency or tribe.

How is the record of decision and report of examination transmitted?

(2) Within five business days of a board's decision, ~~t~~The board shall simultaneously mail to all parties identified in subsection (1) of this section a paper copy of the following:

- ~~(a) its~~ (a) The record of decision; ~~and~~
- (b) The report of examination;
- (c) The application;
- (d) Public notices; and
- (e) Attachments to the application. ~~documents supporting the decision, within five business days of the board's decision.~~

The board shall state to the parties receiving the record of decision and report of examination that it has been simultaneously sent to ecology. Whenever boards have the capacity to do so, they must transmit a signed electronic copy of the record of decision and report of

examination to the ecology regional office on the same day that copies of the decision are mailed or hand-delivered. ~~The paper copy of the transmittal must include:~~

- ~~—— (a) The record of decision;~~
- ~~—— (b) The report of examination;~~
- ~~—— (c) The application;~~
- ~~—— (d) Public notices; and~~
- ~~—— (e) Attachments to the application.~~

Reason for change

This section was reworded for clarity.

(3) As stated in WAC 173-153-130, boards must fully document their process of arriving at a record of decision regarding water right transfer applications. Once the board has concluded its work on a water right transfer application, the board must submit to ecology, ~~not less than seven days or more than~~ within fourteen days after the completion of ecology's review period, any remaining original documents not previously submitted to ecology in accordance with subsection (2) of this section, and any documents received or developed by the board related to its deliberations regarding the application upon which it has made a decision. All documents submitted shall be clearly marked with the board-assigned water right change application number on the water right transfer application pursuant to WAC 173-153-070(7). As noted, the original versions of these documents must be provided to ecology; copies are not acceptable for submission. These documents must be sent to the ecology regional office designated by ecology. The board may retain a copy of all of the above-mentioned documents. ~~Any documents used in reaching a record of decision regarding a water right transfer application must not be destroyed or disposed of, except as allowed by state statute.~~ After the board completes its business on a water right transfer application, and upon submission to ecology of all records related to the application file, ecology shall be responsible for public records requests related to that file.

Reason for change

This subsection was reworded for clarity and in recognition of a board's independent operational status to maintain its own records.

(4) Any comments received by a board regarding its record of decision within thirty days after ecology's final decision must be forwarded to ecology within five business days of the board's receipt of such comments by the board. For the purposes of this subsection, the term "receipt" refers to the act of a board commissioner or designated administrative support person for the board picking up the board's mail. These comments must be submitted by the board to the ecology regional office.

Reason for change

This was clarified to distinguish when a comment is considered received by the board in contrast to being delivered by the post office. Since boards generally meet monthly and may not check their mail every day, a board may not actually “receive” a comment until days or weeks after the comment was delivered by the post office.

WAC 173-153-150 What is ecology's review process of a board's record of decision?

(1) Upon receipt of a record of decision and report of examination, ecology shall document and acknowledge the date of receipt of such documents in writing to the issuing board. Ecology will post on its internet site, generally within five business days, the record of decision, documenting the vote and signature of all board commissioners who participated in the decision, and the report of examination. For boards with the capacity to send signed documents electronically, ecology will post the record of decision and the report of examination generally within three business days of receiving the electronic version. The posted document will be referenced by both the board-assigned application number and by the ecology-assigned application number.

How does ecology review the record of decision?

(2) Ecology will review all records of decision made by water conservancy boards. Upon receipt of a record of decision made by a board, ecology will review:

- (a) The record of decision for compliance with state water laws and regulations;
- (b) The record developed by the board in processing the application; and
- (c) Any other relevant information.

(3) In reviewing a board's decision, ecology may consider any letters of concern or support received within thirty days of the date ecology receives the board's record of decision.

(4) Ecology will not evaluate the internal operations of a board as it reviews a board's record of decision. Exceptions are to the extent that such review is necessary to determine whether the board's decision was in compliance with state laws and regulations concerning water right transfers, including possible cases of a conflict of interest as identified in RCW 90.80.120.

What are ecology's potential review responses and how are the responses made?

(5) Ecology may affirm, reverse, or modify the records of decision made by boards. Ecology's decision will be made in the form of a written administrative order and must be issued within forty-five days of receipt of the board's record of decision by the ecology regional office, except that the forty-five-day time period may be extended an additional thirty days by ecology's director, or his or her designee, or at the request of the board or applicant in accordance with RCW 90.80.080. If ecology does not act on the record of decision within the forty-five-day time period, or within the extension period, the board's record of decision becomes final.

(6) Ecology may issue an order affirming a board's decision. If ecology modifies the record of decision made by a board, ecology shall issue and send to the applicant and the board an order containing its modification of the record of decision. The order shall specify which

part(s) of the record of decision ecology has modified. If ecology reverses the record of decision by the board, ecology shall send the applicant and the board an order reversing the record of decision with a detailed explanation of the reasons for the reversal.

Under what conditions may ecology remand a record of decision to a board?

(7) Ecology may consider conflict of interest issues during its final review of a board's record of decision. In accordance with chapter 90.80 RCW, if ecology determines that a commissioner should have been disqualified from participating in a decision on a particular application under review, the director, or his or her designee, must remand the record of decision to the board for reconsideration and resubmission of the record of decision. Upon ecology's remand, the disqualified commissioner shall not participate in any further board review of that particular application.

(8) Ecology's decision on whether to remand a record of decision under this section may only be appealed at the same time and in the same manner as an appeal of ecology's decision to affirm, modify, or reverse the record of decision after remand.

Can a board withdraw its record of decision from ecology?

(9) If ecology has not yet formally acted on a record of decision by a board, a board may withdraw the record of decision during the period allowed for ecology's review. If a board withdraws a record of decision, ecology shall remove the record of decision from its internet site and post a notice that the decision has been withdrawn. All of the associated documents submitted to ecology by the board with the record of decision will be returned to the board. A board may withdraw the record of decision under the following conditions:

(a) The board must follow chapter 42.30 RCW, the Open Public Meetings Act, in making a decision to withdraw the record of decision; and

(b) The board must send a notice of withdrawal of a record of decision to ecology on a form provided by ecology and identified as Decision to Withdraw a Record of Decision, form number 040-107.

Who is notified of ecology's order relating to a record of decision?

(10) Ecology will send its order to all parties on the same day. The order must be sent by mail, within five business days of ecology reaching its decision, to:

- (a) The board;
- (b) The applicant;
- (c) Any person who protested;
- (d) Persons who requested notice of ecology's decision;;
- (e) The Washington department of fish and wildlife;
- (f) Any affected Indian tribe; and
- (g) Any affected agency.

What is the process should ecology fail to act on a record of decision?

(11) Except as specified in paragraph (5) of this section, if ecology fails to act within the specified time after receipt of the board's record of decision, the board's record of decision becomes the final order of ecology. If a board concludes that the time allowed for ecology to issue its order has lapsed, the board shall notify ecology, the applicant, any protestors, and any parties that have expressed interest to the board about the application that the time period has lapsed. If ecology agrees that the review period has lapsed, ecology will send an order to the board, and all entities listed in subsection (10) of this section, stating that the record of decision is final. If ecology disagrees with the board's conclusion, ecology shall work with the board to establish the beginning date of the review period based upon the date of receipt of the record of decision and report of examination by the ecology regional office.

WAC 173-153-160 When is a board-approved water right transfer that has been affirmed by ecology complete?

Who provides documentation of the transfer when it is completed?

(1) When an affirmed transfer has been completed and the transferred water right has been put to beneficial use, the person authorized to transfer the water right must submit satisfactory evidence to ecology showing the transfer has been completed in accordance with ecology's order authorizing the transfer of the water right. Upon verification of the extent of development as authorized, ecology will issue a change certificate, superseding permit, or a superseding certificate to the water right holder(s) to document that the approved transfer was accomplished. When evaluating the proposed water right transfer application, the board will consider and address in the report of examination any issues pertaining to completion of the development or the application of the water to a beneficial use of water as it is proposed to be changed.

Who receives a copy of the document identifying the perfection of the transfer approval?

(2) When a document, as described in subsection (1) of this section, is issued to the applicant, ecology shall provide a copy to the appropriate board for its records, if requested by the board. The document shall also be recorded, at the applicant's expense, by the county or counties in which the water is authorized for use.

What happens if the approved transfer is not completed within the development schedule or if the change authorization is cancelled?

(3) If development of the approved transfer is not completed in accordance with the development schedule that accompanied the approval, extensions may be requested in accordance with RCW 90.03.320, and will be evaluated by ecology.

(4) If the person authorized to transfer a water right fails to accomplish the transfer in accordance with the authorization, or any subsequent extensions granted by ecology, and does not receive an extension from ecology, or fails to comply with the requirements of the transfer authorization, ecology will cancel the transfer authorization. Upon cancellation of the transfer

authorization, ecology will evaluate the water right to make a tentative determination as to the present validity of the water right and the conditions under which the water right can legally be exercised.

WAC 173-153-170 What are a board's reporting requirements?

Boards are required to submit reports to ecology on their activities at the end of October of each year. The reports must be submitted to the water conservancy board coordinator on a form provided by ecology each year and must include information about board activities during the previous twelve months. The reports shall contain the following:

Water right transfer application data:

- (1) Information about applications to the board, to include:
 - (a) The number of applications filed with the board, identified by water resources inventory area (WRIA);
 - (b) The number of records of decision withdrawn from ecology by the board;
 - (c) The number of records of decision approving or partially approving an application;
 - (d) The number of records of decision denying an application;
 - (e) The number of records of decision remanded back to the board from ecology;
 - (f) The number of applications received by the board, distinguishing between requests to transfer surface water and ground water;
 - (g) The number of applications to transfer a water right documented by a claim;
 - (h) The number of applications to transfer a water right documented by a certificate;
 - (i) The number of applications proposing transfer related to trust water;
 - (j) The number of applications filed directly with the board, and the number transferred from ecology to the board; and
 - (k) The number of hearings held within other counties other than the county or counties which established the board, when water rights were proposed to be transferred from one county to another.

Operational information about the boards:

- (2) Information about the operations of the board, to include:
 - (a) The chair of the board;
 - (b) The primary contact of the board;
 - (c) The board address, phone, and/or email;
 - (d) The board commissioner's names and their terms of office;
 - (e) The regular meeting location, if any;
 - (f) The regular meeting schedule, if any;
 - (g) Any changes in membership of the board, including background and contact information for any new commissioners;
 - (h) Current fees and changes to previously set fees;
 - (i) Training received other than from ecology;
 - (j) Ownership of property by the board;
 - (k) Water marketing activities;

(l) Number of staff employed by the board, and number of staff that provide volunteer service to the board; and

(m) Any litigation in which the board is involved.

WAC 173-153-180 What actions may be appealed under this chapter?

Any person aggrieved by ecology's decision to approve or disapprove the establishment or restructuring of a board, or by an ecology order to affirm, reverse, modify, or remand a record of decision made by a board, may appeal the decision or order to the state pollution control hearings board in accordance with chapter 43.21B RCW.

WAC 173-153-190 Existing rights are not affected.

Nothing in this chapter is intended to impair any existing water rights.

WAC 173-153-200 Will ecology review this chapter in the future to determine if changes are necessary?

This chapter may be reviewed by ecology whenever new information, changing conditions, or statutory modifications make it prudent to consider revisions. In carrying out such a review, ecology shall consult with existing boards.

III. Responsiveness Summary

This section of the concise explanatory statement includes a summary of all comments received by Ecology on the proposed rule and Ecology's responses to those comments. Comments have been organized according to related sections of the proposed rule amendment. The commenters' names are indexed with the comment numbers in the back of this document to identify all comments submitted by each individual. Refer to this index to locate all comments submitted by the same commenter. All comments are identified as to whether they were submitted orally or in writing. Each comment includes Ecology's consideration of the comment in the proposed rule language.

Section 00 – General Comments

Comment 1

Commenter: Bob Rolfness, Grant Co. Water Conservancy Board

Submitted: In writing

Comment, question, or recommendation: The proposed rule states WCB are to use three [3] DOE numbered forms in their process. i.e. The Water Change Application, The ROD, and ROE forms. Are the other forms that have been distributed to us as samples included as an appendix to this rule, etc.? I agree with the way it seems to be now, only the 3 forms, but if the others are to be also used might suggest this would be a little too confining to the WCBs.

Or, if all of the forms are to be used, how about a form requesting Technical Support for reviewing the Casing requirements of a new proposed well? Getting a hydrologist's [sp?] input for all new wells casing requirements is a ERO requirement for us. A standard request for help form would have on it the all the information required for their help.

Action: Comment evaluated. No rule modification made.

Response: There are five forms identified in the rule. In addition to the three mentioned above, a training credit request form, form number 040-104, identified in WAC 173-153-050(7) and a form withdrawing the record of decision from Ecology back to the boards, form number 040-107, identified in WAC 173-153-150(9), are included. These five forms are not intended to restrict the use of other relevant forms. Ecology believes that these forms are appropriate and important to include in the rule. All other forms and letters continue to be available to boards from Ecology in the form of sample templates. Additional sample form or letter templates may be developed as necessary. Boards may adapt these forms to their own needs.

Comment 2

Commenter: Bob Rolfness, Grant Co. Water Conservancy Board

Submitted: In writing

Comment, question, or recommendation: Might add some words about RETURN FLOW calculations. a] General words about the concept and use of ---- b] Applied to the WHOLE existing permit, even if only 10% of the old right is being changed. c] Suggested sources for RETURN FLOW numbers.

Action: Comment evaluated. No rule modification made.

Response: Ecology agrees that return flow calculations are an important consideration when processing water right transfer applications. However, the purpose of this rule is to implement board process elements as outlined in Chapter 90.80 RCW. The information you request can be found in Chapter 90.03 RCW, irrigation guides, Soil Conservation Service, or provided through technical assistance from Ecology.

Comment 3

Commenter: Bob Rolfness, Grant Co. Water Conservancy Board

Submitted: In writing

Comment, question, or recommendation: All the WCBs have been requested by CELP to sent them every correspondence with DOE. I support the need for public documents being made public, but question the procedure. Any words in the WAC that cut down on this paper work "over head" would be appreciated. I was thinking something like DOE communications that go to all WCBs need not be sent to CELP as DOE does this automatically. CELP should be paying for at least 25 copies of the same old non important coordination type email.

Action: Comment evaluated. No rule modification made.

Response: Pursuant to RCW 90.80.135, water conservancy boards are subject to the requirements of chapter 42.17 RCW, Public Records Act. The objective of this rule is to implement process elements related to the interaction of boards and Ecology as boards process water right transfer applications. Responding to public records requests submitted to boards are an operation of the board. It is also the sole responsibility of a board to respond to records request received by that board. As an independent unit of local government, Ecology can not get involved in the operations of a board. Ecology may copy individual entities in correspondence to boards as appropriate.

Comment 23

Commenter: Jerald and Lorre Gefre, Concerned Morningside Citizens

Submitted: In writing

Comment, question, or recommendation: Bottom line? Boards should be more representative of a diverse general public (need more explicit rules here for the County Commissioners to follow in selecting members?); boards should be required to follow rules and show no bias' in decision making; DOE needs to have a representative present at critical meetings where their expertise can help settle some of the contested issues and lessen the chance of DOE overturning or altering Conservancy Board decisions. Board members should not be exempt from punishment for acts contrary to rules that have been set out for them.

Thank you for your time, please get back to us.

Action: Comment evaluated. No rule modification made.

Response: Please see responses to your comment numbers 18, 19, 20, 21, and 22 to address this comment entirely.

A water conservancy boards is a separate unit of local government, as stated in RCW 90.80.050. In addition, RCW 90.80.060 provides that boards are an independently funded entity that may:

- Acquire, purchase, hold, lease, manage, occupy, and sell real and personal property;
- Employ agents, employees, contractors;
- Sue or be sued; and
- Do any and all lawful acts required and expedient to carry out the purposes of the chapter.

Ecology does not review activities of the board that are not directly related to the processing and decision making processes of applications. For instance Ecology has no direct authority to determine whether a board has responded to public disclosure requests as required by statute.

Comment 24

Commenter: Mike Marvich

Submitted: In writing

Comment, question, or recommendation: Public comment for Conservancy Board rule changes.

Water transfer proposals involving an existing surface water right to be used as a mitigation source for a new ground water withdrawal will include an evaluation of groundwater temperature for summer and winter conditions and surface water temperature for summer and winter conditions.

This clarification will help support existing habitat restoration efforts and availability of winter stock water.

Action: Comment evaluated. No rule modification made.

Response: While Ecology recognizes the significance of fully investigating each application, it would not be appropriate to direct investigations towards resolving applications before the application is filed. The current proposed language already frames the nature of the investigation to be conducted to satisfy existing law. To dictate more specific investigations, whether relevant or not, wouldn't serve the purpose of resolving an application and making a decision. There are no doubt instances where this might be an appropriate line of investigation, however each application must be considered and investigated on a case by case basis.

Section 030 – How are terms defined in this rule?

Comment 25

Commenter: Mary Burke, Kittitas Co. Water Conservancy Board

Subsection: WAC 173-153-030

Submitted: Orally at public hearing, September 25, 2002, Ellensburg, WA

Comment, question, or recommendation: Under the new WAC 173-153-030 definitions, the word "Definitions" has been stricken and it's now a question, "How are terms defined in this rule?" I would prefer it says "Definitions," but I understand this is a determination of the Department to now have headings in questions, which I find a little awkward for my format but I would just note that.

Action: Comment evaluated. No rule modification made.

Response: The trend in rule writing is leaning towards a question and answer format and is intended to assist the reader in researching the rule. It also provided the rule writer a better means of organizing the information in the rule as it was revised.

Comment 26

Commenter: Mary Burke, Kittitas Co. Water Conservancy Board

Subsection: WAC 173-153-030, "Alternate"

Submitted: Orally at public hearing, September 25, 2002, Ellensburg, WA

Comment, question, or recommendation: On page 2 in the same section there are two bullets that have to do with alternates. I have a question about the second bullet on page 2 at the top, "Cannot take the place of a commissioner on a temporary basis." I would like the Department to rethink that to see if there isn't a time when a person could temporarily set themselves aside for one reason or another and have the alternate take their place so that the Conservancy Board could continue to function.

Action: Comment evaluated. No rule modification made.

Response: The definition of an alternate has been provided in the proposed rule as clarification of a practice that has evolved as boards have become more experienced. Upon a sudden

permanent vacancy on a board, board commissioners have sometimes found it difficult to reach a quorum and/or continue processing applications. To avoid these situations, Ecology has agreed to train an additional person as an “alternate” to a board at the request of a board or county. Upon a vacancy on the board the alternate can be appointed to fill the vacancy, and, if already trained, participate in making records of decision immediately upon appointment. This process assists the boards in maintaining some stability as unexpected turnover occurs.

RCW 90.80.050(1) states that boards may consist of three *or* five commissioners serving for a period of six years. The statute also states that all vacancies shall be filled for the unexpired term. The statute does not provide for a person to be appointed on a temporary basis.

Comment 27

Commenter: Mary Burke, Kittitas Co. Water Conservancy Board

Subsection: WAC 173-153-030, “Consumptive use”

Submitted: Orally at public hearing, September 25, 2002, Ellensburg, WA

Comment, question, or recommendation: In the middle of the page under the Consumptive Use definition it says, "'Consumptive use' means use of water whereby there's a diminishment of the water source." I have not been able to find any usual definition comparable to that definition and I would request that the Department rethink that definition and see if we can't come up with another one that is at least compatible with the adjudication in the Yakima basin which is the area in which I sit upon this board.

Action: Comment evaluated. No rule modification made.

Response: The identical definition is used within WAC 173-500-050. It was included with the original water conservancy board rule to provide consistency and a common understanding of this term.

The term consumptive use as it relates to water rights is generally understood to be water that is “consumed” and, thereby, diminishes the water source. It is important boards understand how Ecology will review their records of decision since Ecology will issue the final order on the proposed application. The definition of “consumptive use” as it relates to this rule reflects the general practices of Ecology staff as they make tentative determinations of the extent and validity of a water right proposed to be changed.

Comment 28

Commenter: Mary Burke, Kittitas Co. Water Conservancy Board

Subsection: WAC 173-153-030, “Water right holder”

Submitted: Orally at public hearing, September 25, 2002, Ellensburg, WA

Comment, question, or recommendation: On page 3 under the definition of "Water right holder" the last part of the sentence, last sentence says, "owned water right which is appurtenant to the land they own or in which they have a majority interest." I call to the Department's attention that a person who is legally married or in some other cases in a partnership agreement in a company cannot have a majority interest and at least I will at least speak for my own personal belief, which I don't think you should have to have a majority interest within your community property interest and I'd ask that that be revisited.

Action: Comment evaluated. Rule modification made.

Response: Ecology agrees. The language has been changed to clarify the definition. WAC 173-153-030, the definition of a water right holder, now reads, “. . . the land that they *individually or through marital community property* own or in which they have a majority interest.

Section 040 – How is a water conservancy board created?

Comment 29

Commenter: Mary Burke, Kittitas Co. Water Conservancy Board

Subsection: WAC 173-153-040(8)(a)

Submitted: Orally at public hearing, September 25, 2002, Ellensburg, WA

Comment, question, or recommendation: On page 6 this is, "What is included in a petition to ecology for the creation of a board?" But there's definition here, "beneficial use," and I find that "beneficial use" extremely awkward because the persons are asked to be subject to sufficient cause or exempt pursuant to 90.14.140 and the counties are counties which initiated the petition and in some cases one could read that to say that you would have to either have permission from the Department, which I think is unconscionable or to be adjudicated before you could petition. And I don't think that fits the statute and I would just like to ask the Department to revisit that, because I don't think that was their basic intent in doing that, either, to preclude counties from having boards.

Action: Comment evaluated. Rule modification made.

Response: In order to be consistent within the definition of a water right holder as defined in the proposed rule, the language of this subsection has been changed to read, *"If five petitioners meeting the definition of a water right holders ~~who divert or withdraw water for beneficial use, or whose nonuse of water is due to a sufficient cause or exempt pursuant to RCW 90.14.140, in the county or counties in which the board would serve initiated~~ the petition . . ."*

Section 042 – How are water conservancy board commissioners appointed and the length of their terms determined?

Comment 21

Commenter: Jerald and Lorre Gefre, Concerned Morningside Citizens

Submitted: In writing

Comment, question, or recommendation: The make up of the Yakima Board was a farmer, a banker and a businessman. All of these people (fields) have a vested interest in approving changes such as Dennis/DeVries were asking for. There was no "outside" representation on the Board.

We encourage the following actions:

Water Board membership should include at least one person from outside the business/political fields. This person should come from a non-business background and preferably have an ecological background.

Action: Comment evaluated. No rule modification made.

Response: The legislature identifies the requirements for water conservancy board commissioners in RCW 90.80.050:

- All commissioners must be persons who are residents of the county or counties or a county that is contiguous to the county that the board is to serve.
- All commissioners must be trained prior to participating in a record of decision of a board.
- One of the appointed board commissioners must be an individual water right holder who diverts or withdraws water for use within the area served by the board.
- One of the appointed board commissioners must not be a water right holder.

The responsibility for appointing board commissioners is solely at the discretion of the county or counties legislative authority or authorities. The purpose of the rule is to explain processes identified in statute. Therefore, Ecology does not have the authority to stipulate additional qualifications for board commissioners beyond what is currently required in statute.

Section 043 – How can a board's authority be revoked or the board dissolved?

Comment 4

Commenter: William Attwater, Island Co. Water Conservancy Board

Submitted: In writing

Comment, question, or recommendation: THIS IS TO INFORM YOU THAT, AS CHAIR OF THE ISLAND COUNTY BOARD, I THINK THE SUBJECT SECTION IS UNNECESSARY AND WILL HARM SMALL COUNTIES LIKE ISLAND COUNTY. AT THE SAME TIME THAT ISLAND COUNTY'S BOARD WAS APPROVED, DOE PUT EXTRA STAFF TO WORK HANDLING THE CHANGE BACKLOG IN THE COUNTY. THE BOARD HAS ONLY HANDLED ONE APPLICATION AND ITS NOT CLEAR AT THIS POINT WHETHER OR NOT THAT CHANGE APPLICATION WILL GO FORWARD OR WHETHER IT WILL BE TAKEN OVER BY DOE SINCE, ACCORDING TO DOE, THE UNDERLYING CERTIFICATE IS IMPROPER. SINCE FORMING A CONSERVANCY BOARD IS A SOMEWHAT LENGTHY PROCESS IT APPEARS SHORTSIGHTED TO PUT INTO REGULATION A TWO YEAR TERMINATION RULE. YES, I KNOW THE RULE SAYS MAY, BUT IT STILL CASTS A CLOUD OVER THE BOARD. ALSO, WHAT HAPPENS IF TWO YEARS GOES BY AND A COUNTY BOARD IS IN THE MIDDLE OF HANDLING AN APPLICATION FOR CHANGE? THE SMALL COST TO THE STATE FOR YEARLY TRAINING FOR THREE BOARD MEMBERS SHOULD BE WEIGHED AGAINST THE FUTURE NEEDS IN ISLAND FOR A CONSERVANCY BOARD ONCE DOE HAS CHEWED THROUGH THE BACKLOG AND DEPARTED FOR OTHER COUNTIES.

Action: Comment evaluated. No rule modification made.

Response: WAC 173-153-043 establishes three circumstances under which Ecology could revoke the authority of a water conservancy board to make water right change decisions. Those three circumstances are:

1. If the board fails to issue a decision within two years of the formation of the board or since the date of the last decision;
2. If the board shows a pattern of ignoring statutory requirements in the processing applications;
3. If revocation of authority is requested by the county that formed the board.

If Ecology acts to revoke the authority of a board for any of the three reasons provided, the board is given thirty days to respond and demonstrate to the department that revocation should not occur. This provision of the rule was also contained within Section 173-153-040(5) of the rule being amended and is not new, although it was moved to a new section of the draft rule. As of today's date, no board has had its authority to make change decisions threatened for any of the

three circumstances provided. We do have boards that have failed to issue any decision for a period of two years but Ecology presently has no current plans to revoke the authority of those boards.

Ecology believes that there will be an increasing demand for water right change application decisions in the future. The number of applications filed with a board should increase as boards become established, knowledge of the boards existence increases, and the requirements for change and transfer approval becomes better understood by the public. Boards can accelerate public understanding and awareness by speaking before local organizations and in other ways maintaining a high public profile.

Serving on a water conservancy board is a great opportunity for local citizens without special expertise in water management to participate in decisions affecting their local environment and economy. However, board commissioners serve without pay and must be willing to dedicate a considerable amount of their personal time to the demands of a board. Additionally, boards must devote time to organize themselves and meet training requirements prior to actually beginning work on any water right change applications.

Water right changes represent one of the best means available to acquire a water right within many areas of the state. Changes allow water right holders to maximize the beneficial use of existing water rights. There are some portions of the state from which Ecology has historically received a small number of change applications on a yearly basis. The low number of applications may indicate that within these areas there is little demand to modify existing water rights. Ecology, however, has found that when there is a close examination of existing water rights, such as during an adjudication of water rights or in areas where watershed planning is taking place, unauthorized changes and transfers have been discovered.

The provision for revocation of board authority if no decision is made within a two year period was retained within the draft rule to address the possibility of a board failing to conduct business. The performance standard chosen to measure whether a board is conducting business is the issuance of records of decision, because making those decisions is the primary function of a water conservancy board. This provision is not intended to punish boards for simply not issuing decisions or for the lack of application filings before the board. Ecology believes that the rate of filing of applications to change or transfer existing water rights will continue to grow and that no board need be without an application for a period as long as two years. The decision to file an application with a board is made by the applicant. Applicants may make that decision based on many factors including the fees involved, board efficiency and accuracy, or convenience.

Ecology maintains contact with each board and is aware of the hard work being performed by boards. Ecology is not interested in revoking the authority of any board. The provision in the rule is intended to address problems that might otherwise be created if a board essentially deactivates itself by failing to conduct business. Ecology would not begin revocation of board authority without communicating to the board in question that such action is being considered. If revocation did occur, there is also the more formal safeguard provided in the rule through the board's opportunity to respond within 30 days after Ecology revokes the board's authority.

Section 050 – What are the training requirements for board commissioners?

Comment 30

Commenter: Mary Burke, Kittitas Co. Water Conservancy Board

Subsection: WAC 173-153-050, (5) through (7)

Submitted: Orally at public hearing, September 25, 2002, Ellensburg, WA

Comment, question, or recommendation: On page 10, which is the AMENDATORY SECTION, 173-153-050, What are the training requirements for board commissioners, and I'm concerned here a little bit about the retraining or additional training because some of us are finding some awkwardness in how to find things to do that will conform to that and confirm our training. And I think perhaps that needs to be revisited and I won't just read all that in there, but I have explained some of my questions about that to Janet Carlson and I think she's aware of those.

Action: Comment evaluated. No rule modification made.

Response: The continuing education requirement for board commissioners is a minimum of eight hours per year. Since water law changes occur frequently due to new court decisions and legislation, it is beneficial to boards to have the most up-to-date information in order to process water right change applications effectively. Ecology provides annual training for all current board commissioners. Generally this training provides board commissioners with information on significant changes to the law and provides open discussion between boards and Ecology staff on relevant issues.

Continuing education requirements are very broad and allow flexibility for board commissioners. Opportunities may include such things as readings, seminars or conferences, or field experience on various subjects. The subjects can be anything that directly relates to a commissioner's work on a water conservancy board.

A credit request for participating in any activity that may relate to a commissioner's board work can be submitted to the water conservancy board coordinator. A training credit request form is available to all board commissioners for this purpose from the water conservancy board coordinator. The water conservancy board coordinator will respond to all training requests confirming continuing education credit.

Section 060 – What is the scope of authority of a water conservancy board?

Comment 5

Commenter: Bob Rolfness, Grant Co. Water Conservancy Board

Subsection: WAC 173-153-060(2)

Submitted: In writing

Comment, question, or recommendation: I don't believe it states anywhere a WCB is to obtain a copy of the full DOE file material supporting a water right on which they are working. Doing this is an ERO requirement and you might want to include it in the WAC. Also some words about who pays the copying costs, etc.

Action: Comment evaluated. Rule modification made.

Response: We have added language to section WAC 173-153-060(2) to reflect the process for boards to obtain a copy of the water right file related to the transfer application. Ecology is required to provide that file, without charge, to the board that is processing the related transfer application.

Comment 6

Commenter: Bob Rolfness, Grant Co. Water Conservancy Board

Subsection: WAC 173-153-060(4)

Submitted: In writing

Comment, question, or recommendation: Middle of Page 14 subpar (4) where it talks about impairment on old, not acted upon, water right transfers applications must be considered.

Specific language recommendation or amendment: Might add a line saying Old water right APPLICATIONS need not be considered. [New 2 lines law, just passed I think]

Action: Comment evaluated. No rule modification made.

Response: Changes to RCW 90.03.380(5) in 2001 created "two-lines" for processing water rights applications; one for changes and one for new appropriations. Consideration of pending applications for new water rights is no longer required when evaluating a water right transfer

application. However, consideration must be made of other water right transfer applications pending before Ecology and other water conservancy boards. The term “application” is defined within the amended rule to refer only to applications for transfers and changes of existing water rights.

Comment 8

Commenter: Darryll Olsen, Ph.D., Chairman Benton Co. Water Conservancy Board

Subsection: WAC 173-153-060(1)

Submitted: In writing

Comment, question, or recommendation: Section 173-153-060 Scope of Authority of Water Conservancy Boards. RCW 90.80 virtually grants to the Water Conservancy Boards (Boards) the same authority for water right change/transfer decisions as that held by the WADOE. Seasonal transfers are not noted under Sec. (1); and if they are conducted by a Board, the procedure *should be the same* as possible as that conducted by WADOE. The BCWCB has recommended to applicants that they do such changes/transfers directly with WADOE—but the BCWCB would do so if special circumstances required it.

Action: Comment evaluated. No rule modification made.

Response: Boards have been granted the authority to act upon applications for the same kinds of transfers as Ecology as stated in RCW 90.80.055(1)(a). The definition of a “transfer” as defined in RCW 90.80.010 and WAC 173-153-030 includes water right transfers as authorized under RCW 90.03.390, temporary changes. In subsection WAC 173-153-060(1)(a) the term water right “transfer” therefore includes temporary changes. The process for the transfer of a temporary change is as much the same as Ecology’s process as provided for by law.

The term “seasonal” was removed from WAC 173-153-060(2) and now states, *“The application may be for a permanent or temporary use.”* Temporary changes include seasonal changes. The change was made to simplify the language.

Comment 31

Commenter: Mary Burke, Kittitas Co. Water Conservancy Board

Subsection: WAC 173-153-060(1)(d)

Submitted: Orally at public hearing, September 25, 2002, Ellensburg, WA

Comment, question, or recommendation: On Page 12 under 153-060, "What is the scope of authority of a water conservancy board." It's No. (d) which says, "Perform other activities as may be authorized under chapter 90.80, subject to other applicable state laws and regulations." I think that maybe needs a little further explanation.

Action: Comment evaluated. No rule modification made.

Response: RCW 90.80.055 provides specific authorities to board. Rather than repeat the statute in its entirety, the proposed rule language references the statute. The powers authorized to boards are limited by applicable state laws and regulations.

Comment 32

Commenter: Mary Burke, Kittitas Co. Water Conservancy Board

Subsection: WAC 173-153-060(2)(b)

Submitted: Orally at public hearing, September 25, 2002, Ellensburg, WA

Comment, question, or recommendation: Under (2) (b) I find this very awkward. It says, "As part of the process described in subsection (2) (a) of this section, boards should determine whether a watershed planning unit is involved in planning related to the source of water that would be affected by the application being considered. If so, the board should notify the planning unit of the application, and consider comments from the watershed planning unit prior to issuing its record of decision." I think a lot, most counties, probably, have done some 25.14 planning and if the planning unit and going to -- has to make comments before one could issue a decision, if that's the intent of that WAC, I think that's going to become extremely burdensome and one of the reasons for forming conservancy boards was to do some of this in a timely fashion. And I think that would add a great burden, at least in time, to the process.

Action: Comment evaluated. No rule modification made.

Response: The language in this section has been altered and your comment refers to subsection (2)(b) Boards with jurisdiction in an area where watershed planning is occurring are encouraged to communicate with the watershed planning unit. It is beneficial to both the planning unit and the board to be kept informed of water-related activities occurring within the area. This is left to the discretion of the board.

Section 070 – What does an applicant need to know about filing an application for transfer of a water right?

Comment 9

Commenter: Darryll Olsen, Ph.D., Chairman Benton Co. Water Conservancy Board

Subsection: WAC 173-153-070(6)(b)

Submitted: In writing

Comment, question, or recommendation: Section 173-153-070 Application for transfer of a water right. The BCWCB has not charged a fee to applicants until after the Board formally accepts an application for review and processing. As such, we suggest eliminating Sec. (2)(b), as a requirement for a “complete application.” Typically, we invoice applicants after sending-out public notice, indicating that actual application processing will take place.

Action: Comment evaluated. Rule modification made.

Response: Your comment reflects language offered in an earlier draft version of the rule amendments. The language your comment refers to is found in WAC 173-153-070 (6)(b) in the current proposed draft rule amendment. The language has been altered to indicate that a complete application should be accompanied by “*such other data or fees as may be required by the board.*” Subsection (6)(b) has been deleted. Since each board operates independently, we believe this language provides flexibility so each board may determine how and when to collect the fees it sets.

Comment 33

Commenter: Mary Burke, Kittitas Co. Water Conservancy Board

Subsection: WAC 173-153-070(3)

Submitted: Orally at public hearing, September 25, 2002, Ellensburg, WA

Comment, question, or recommendation: On page 14 it is 153-070, "What does an applicant need to know about filing an application for transfer of a water right? How are applications accepted for processing by a board?" In the statute, I'm sorry, I cannot cite you the specific place in the statute, but 90.80 is pretty particular about the board people not being -- having some removal and acting in some quasi judicial fashion and yet at (3) here it says, "A water right transfer application is considered filed when it is received by a board commissioner, or a

designated administrative support person for a board." I find that a little awkward in that one could hand a board commissioner their application and I'm not sure that fits with the statute and that needs to be at least further defined. And secondly, if the board commissioners are going to accept them, I mean you could go to coffee some morning and have somebody hand you an application and I would find that a little bit awkward having sat on some other boards and I'd like to have that further defined, at least.

Action: Comment evaluated. Rule modification made.

Response: The language in WAC 173-153-070(3) has been changed and now reads, "(3) *A water right transfer application is considered filed when it is received by a board commissioner or a designated administrative support person for a board at the location designated by the board.*"

Comment 34

Commenter: Mary Burke, Kittitas Co. Water Conservancy Board

Subsection: WAC 173-153-070(4)

Submitted: Orally at public hearing, September 25, 2002, Ellensburg, WA

Comment, question, or recommendation: No. (4) says, "An application may propose the transfer of no more than one water right." And we have had a number of cases in this county and I think other counties where the water rights are -- don't get me wrong. I'm not talking here about commingled waters -- but the water right is a water right for more than one purpose. And I think that needs to be said that whether we're talking about the priority date or what it is or what, because a lot of water have a separate application to transfer your irrigation right, your stock water right, your fire control right and your domestic right. And I would like that clarified slightly better.

Action: Comment evaluated. Rule modification made.

Response: It is important that each water right has a specific recorded history. Individuals researching a particular water right, in this case for the purpose of changing it, must have access to the exact history of that right in order to make an accurate tentative determination as to the extent and validity of the right. Therefore, it is important that each application propose the transfer of no more than one water right.

The proposed rule was modified in response to internal review to clarify the intent that one application is required per one water right. The section now reads, "*A separate application must be filed for each water right that is proposed to be transferred.*"

Comment 35

Commenter: Mary Burke, Kittitas Co. Water Conservancy Board

Subsection: WAC 173-153-070(18)

Submitted: Orally at public hearing, September 25, 2002, Ellensburg, WA

Comment, question, or recommendation: On page 17, which addresses the time frames of a number of things and I'd just without addressing either of these -- excuse me, any of these in any particular time frame, I think some of the time frames -- and I did note that Ms. Carlson did say that these are boards who are not paid and have no staff and no money and in some cases the time frames if they are going to be any lesser than they are now sometimes cannot be met. And I think boards that are doing the best they can do with very little support in some instances need some longer time frames than that. And in some cases we have had to drive things to Yakima to be filed and that sort of thing and parts of the year you just can't simply do that. So I'd like the time frames not to be very restrictive.

Action: Comment evaluated. Rule modification made.

Response: There are two time frames mentioned in WAC 173-153-070(18) of the proposed rule amendment. The one time frame identified in this section refers to notifying the applicant and Ecology of the board's decision to decline processing the application. Since it is important that this information is provided in a timely manner we believe fourteen business days, or nearly three weeks, is sufficient time for this notification.

Since boards generally meet only once a month we agree that the time frame of fifteen days to provide Ecology additional information if requested may need more flexibility. Therefore, the language now reads, ". . . *The board must provide this additional written explanation within ~~fifteen~~ thirty days of ecology's request.*"

Comment 36

Commenter: Mary Burke, Kittitas Co. Water Conservancy Board

Subsection: WAC 173-153-070(20)

Submitted: Orally at public hearing, September 25, 2002, Ellensburg, WA

Comment, question, or recommendation: At No. (20) on page 17 it says --"Boards must ensure that copies of the application accepted by them for processing are provided to interested parties in compliance with existing laws, as well as with current ecology memoranda of understanding, policies and other guidance." And I have a problem with that because it's not

defined as what they are. I mean, a board could very happily be processing water rights according to statute in their own procedures and find out there's something there that we don't know. I think it should be the responsibility of somebody who says if you're going to have to do these certain things they need to be provided to the boards. This is not very precise. "To assist the boards in this, ecology will provide a list of potentially interested parties," and I think a party defined under law should be an interested party or not --potentially interested party doesn't fit Aquavella at all and I think that's extremely awkward because we are processing water rights within an adjudication which have identified themselves to ecology. If we have a separation of local government they need to be identified properly by usual procedures to the board. "Additional interested parties, including Indian tribes, may request copies of applications from boards." And I think if they submit a request for the applications, I think all boards are now sending them to them. But No. (20), I guess I found the language befuddling. So I don't think I have any objections to it except the boards can't meet it and I think it needs to be rewritten in a more precise way.

Action: Comment evaluated. Rule modification made.

Response: This comment is accurate in that the boards need assistance with obtaining the list of interested parties who have requested copies of applications. The current proposed language indicates that Ecology will provide a list to boards. However, the phrase "potentially interested" has been removed. Ecology will continue to provide a list to boards as needed. In terms of any adjudication, Ecology is responsible for the communication with the parties involved in an adjudication.

The entire language of WAC 173-153-070(20) has been rewritten to read, *"(20) Boards must ensure that copies of applications accepted by them for processing are provided to interested parties in compliance with existing laws, ~~as well as with current ecology memoranda of understanding, policies and other guidance.~~ To assist the boards in this, ecology will provide a list of ~~potentially interested~~ parties which have identified themselves to ecology as interested in the geographic area of the board. Additional interested parties, including Indian tribes, may request copies of applications from boards."*

This language makes the rule analogous with the statutes and clarifies that boards must comply with the requirements of law in providing copies. Ecology policies will continue to be provided and relied on in training board commissioners.

Comment 37

Commenter: Mary Burke, Kittitas Co. Water Conservancy Board

Subsection: WAC 173-153-070(21)

Submitted: Orally at public hearing, September 25, 2002, Ellensburg, WA

Comment, question, or recommendation: No. (21) I don't understand, either. "A copy of each application accepted by a board shall be provided to any Indian tribe that has reservation lands or trust lands contiguous with or encompassed within the geographic area of the board's jurisdiction." I'd like to call the Department's attention that there are some trust lands outside reservations. I'm sure they know this. And if they're going to do this, I think there needs to be a process by which the people want the information requested from the board, otherwise the board is going to spend an awful lot of time doing some research and I don't think that was the intent of the statute.

Action: Comment evaluated. No rule modification made.

Response: RCW 90.80.070(3) requires notice to tribes with lands within the geographic area. A board doesn't need to conduct research regarding tribal lands with each application since ownership of tribal land doesn't change frequently. Ecology has assisted boards in determining tribal lands ownership and will continue to do so in the future.

Section 080 – What public notice is given on a water right transfer application before a board?

Comment 10

Commenter: Darryll Olsen, Ph.D., Chairman Benton Co. Water Conservancy Board

Subsection: WAC 173-153-080(6)(b)

Submitted: In writing

Comment, question, or recommendation: Sec. 173-153-080 Public Notice. The comment here pertains to the timing of the control numbers, relative to publishing public notice. We suggest that receiving the control numbers should be an independent action from publication. As a matter of efficiency and public notification, the BCWCB usually sends-out copies of the application and public notice—to WADOE and all interested parties—*at the same time*. “Tracking” the water right application is not dependent on the control numbers (adding a “C” or “@1” to the water right numbers), as the application identifies the water right by the existing water right number. When we issue the ROE/ROD, we then identify the “changed” water right by the new control number. There does not appear to be a compelling need to require a control number prior to sending-out publication.

Action: Comment evaluated. Rule modification made.

Response: Your comment reflects language offered in an earlier draft version of the rule. The language your comment refers to is not found in the current proposed draft rule amendment. The current proposed draft rule amendment reflects suggestions received during the informal comment period. It provides a means for boards to independently assign a number to an application upon acceptance of water right transfer application. This number is then used throughout the board’s processing of that application. We believe it provides a means for boards to operate more independently and efficiently. It also provides a standard number that the public can refer to throughout the processing of the application.

Comment 38

Commenter: Mary Burke, Kittitas Co. Water Conservancy Board

Subsection: WAC 173-153-080(1)

Submitted: Orally at public hearing, September 25, 2002, Ellensburg, WA

Comment, question, or recommendation: On page 18, under 153-080 it says, "What public notice is given on a water right transfer application before a board?" Oh, it says, "The board shall publish," and it's stricken, "or require the applicant to publish." One, our boards have no money. Secondly, the applicant is the person who should be responsible for seeing that the legal description and the water right is correct and publish that and I really have some problems with asking the board to take over the responsibility of the applicant. One, it may lead to some errors and secondly it's very costly to the board.

Action: Comment evaluated. No rule modification made.

Response: Ecology agrees that being solely responsible for the publication of the public notice may be a burden on the boards. The proposed language is consistent with RCW 90.80.070(3) that states, "*After an application for a transfer is filed with the board, the board shall publish notice of the application. . . .*" However, subsection (2) in the proposed rule allows boards to place some of the responsibility back on the applicant. Subsection (2) reads "*The board may require the applicant to review and confirm the information in the public notice prior to publication. If the board does so, the applicant assumes responsibility for any errors contained in the description of the application published in the public notice.*" It is a board's operational decision as to how they will implement this process.

Section 090 – How can protests and letters of concern or support on a water right transfer application be submitted to a board?

Comment 11

Commenter: Darryll Olsen, Ph.D., Chairman Benton Co. Water Conservancy Board

Subsection: WAC 173-153-090(1)

Submitted: In writing

Comment, question, or recommendation: Sec. 173-153-090 Protests. It appears there may be a typographical error in Sec. (1). The existing text refers to “A protest against granting an application...” This probably should read “A protest against granting a change/transfer decision...”

Action: Comment evaluated. No rule modification made.

Response: Your comment reflects language offered in an earlier draft version of the rule and not the proposed draft rule amendment. Language similar to what you suggest is already reflected in WAC 173-153-090(1) in the current proposed draft rule.

Comment 20

Commenter: Jerald and Lorre Gefre, Concerned Morningside Citizens

Subsection: WAC 173-153-090(11)

Submitted: In writing

Comment, question, or recommendation: The Yakima Board was very abrasive towards protestors of the Dennis/DeVries proposed changes. Calling us non-experts and chastising us for commenting on or disputing the DeVries positions was the norm. Pertinant (sic) information from local residents was ignored. Protestors in the crowd were ignored while supporters of Dennis/DeVries were announced and read into the record. Dennis/DeVries were allowed to utilize the protestors time for their own presentation by their experts.

We encourage the following actions:

Water Boards be made responsible for assuring that input from all participants be treated with respect and given proper weight in Board decisions.

Action: Comment evaluated. No rule modification made.

Response: Your concern regarding how comments are received by a board is addressed in the statute and the current proposed rule. RCW 90.80.070(3) states *“Any person may submit comments and other information to a board regarding an application. The comments and information may be submitted in writing or verbally at any public meeting of the board to discuss or decide on the application. The comments must be considered by the board in making its record of decision.”* Under the proposed rule amendments, WAC 173-153-090(11) states that *“boards must accept and consider any oral or written comments in evaluating an application, in accordance with chapter 90.80 RCW, this chapter, and board bylaws.”*

In addition, proposed language in WAC 173-153-110(6) states, *“Boards must consider all comments and protests received about a pending application, whether or not additional information is provided by the protestor, or commenter.”* The boards are required to follow these rules and it would be inappropriate for a board to ignore verbal or written comments submitted to a board.

Section 100 – How does a water conservancy board operate?

Comment 18

Commenter: Jerald and Lorre Gefre, Concerned Morningside Citizens

Subsection: WAC 173-153-100(5)

Submitted: In writing

Comment, question, or recommendation: We have had experience with the Yakima County Water Conservancy Board in the Dennis water rights changes case and have the following comments. We could not download the proposals.

We still have not received documentation (tapes or typed minutes) of at least two critical meetings. The information we did get was received only after weeks and months of badgering the board secretary.

We encourage the following actions:

Water Boards be made responsible for complete compliance with the freedom of information act.

Action: Comment evaluated. No rule modification made.

Response: The Freedom of Information Act is a law under which federal entities operate. State agencies and local governmental entities of Washington are required to operate under a similar state law referred to as the Public Records Act, chapter 42.17 RCW. RCW 90.80.135 mandates that Water Conservancy Boards follow the Public Records Act. This is also addressed in the current proposed rule amendments under WAC 173-153-100(5).

Comment 19

Commenter: Jerald and Lorre Gefre, Concerned Morningside Citizens

Subsection: WAC 173-153-100(1)

Submitted: In writing

Comment, question, or recommendation: The board received input from Dennis/DeVries at at least one meeting where oponents were told that no action or input was going to be taken concerning the Dennis/DeVries case.

Board members discussed the case with Dennis/DeVries "experts" in their homes, on the telephone and other places away from the board meetings where no representatives of opponents were present.

We encourage the following actions:

Water Boards be made responsible for advertising date, time and location of their meetings according to established rules.

DOE very seldom had a representative present at meetings, even at critical junctures of Conservancy Board meetings.

Action: Comment evaluated. No rule modification made.

Response: Pursuant to RCW 90.80.130, water conservancy boards are required to operate under a law referred to as the Open Public Meetings Act, chapter 42.30 RCW. In addition, boards are also subject to chapter 42.32 RCW, Meetings. This is addressed in the current proposed rule amendments under WAC 173-153-100(1).

Ecology seldom has a representative at board meetings. Ecology staff typically do not attend board meetings unless specifically invited by the board and are available to do so in order to provide technical assistance or training as defined RCW 90.80.055(1)(d). RCW 90.80.050 identifies water conservancy boards as a separate unit of local government within the state. As such, they operate independently and make independent records of decision (RODs) on water right change applications accepted and processed by the board. Ecology reviews all records of decision and issues final orders on the RODs issued by the boards.

Section 110 – What is involved in the examination of an application before a board?

Comment 12

Commenter: Darryll Olsen, Ph.D., Chairman Benton Co. Water Conservancy Board

Subsection: WAC 173-153-110(3)

Submitted: In writing

Comment, question, or recommendation: Sec. 173-153-110 Examination of Application. Under Sec. (2), the P.E. requirement for submitting hydrologic data to the Boards is not pragmatic or needed. Information is often provided from agency staff (USGS or NRCS) or private contractors that have appropriate experience or knowledge to deal with site-specific issues. The intent here is understood, but this is overkill relative to real-world review and conditions.

Action: Comment evaluated. No rule modification made.

Response: Your comment reflects language offered in an earlier draft version of the rule. Your comment is reflected in WAC 173-153-110(3) of the current proposed rule. The reference to the licensed engineer denotes changes to the statute, chapter 18.43 RCW, Engineers and Land Surveyors and chapter 18.220 RCW, Geologists. These statutes require that as of July 1, 2002 hydrogeologists and hydrologists be licensed. As this proposed rule is intended to provide guidance to the boards, Ecology believes it is important to reflect this statutory change in the rule language.

Comment 13

Commenter: Darryll Olsen, Ph.D., Chairman Benton Co. Water Conservancy Board

Subsection: WAC 173-153-110(8)

Submitted: In writing

Comment, question, or recommendation: Sec. 173-153-110 Sec. (5). This should be clarified, so that consultation to planning groups pertains to applicable situations, otherwise this is a waste of all parties' time (suggest you include the phrase *directly involved* here to note some distinction).

Action: Comment evaluated. Rule modification made.

Response: Your comment reflects language offered in an earlier draft version of the rule. The language your comment refers to is found in WAC 173-153-110(8) in the current proposed draft rule amendment. The language has been amended to read, “. . .boards shall determine whether an Indian tribe, watershed planning unit, or other governmental body is directly involved in planning . . .”

Comment 39

Commenter: Mary Burke, Kittitas Co. Water Conservancy Board

Subsection: WAC 173-153-110(8)

Submitted: Orally at public hearing, September 25, 2002, Ellensburg, WA

Comment, question, or recommendation: On page 22, this is the section on "What other entities must be consulted when a board examines an application?" No. (8), "When public interest applies to the application evaluation or when there may be existing rights that could be impaired, board shall determine" -- but I think the board's already determined under 380 whether existing rights could be impaired and also under 90.44 -- "determine whether an Indian tribe, watershed planning unit, or other governmental body is involved in planning or water management related to the source of water that would be affected by the application." Well, one, watershed planning units do not own water rights, they are a planning unit and I think that expands their authority no end and I would object to that. And secondly, I think the board should not -- the people who want to be involved with these, if they are published, should notify the board. The board can't go doing research to see if anybody is involved with this. But the inclusion of the watershed planning unit I find outside the statute that controls watershed planning.

Action: Comment evaluated. Rule modification made.

Response: The language has been amended to read that a board “should” rather than “shall” to provide more discretion on the part of a board. The proposed rule intends to provide a process for boards to keep local watershed planning units informed of water activity within their planning area. A board does not need to conduct research regarding whether a stated entity is involved in planning or water management related to the source of water. That information does not change frequently. Ecology has assisted boards in determining whether entities are involved in planning or water management and will continue to do so in the future.

Comment 40

Commenter: Mary Burke, Kittitas Co. Water Conservancy Board

Subsection: WAC 173-153-110(12)

Submitted: Orally at public hearing, September 25, 2002, Ellensburg, WA

Comment, question, or recommendation: On page 23, under (12), and I do understand that I did ask that this be defined. This is not the definition that I think is so helpful, however. Sorry about that. But it says, "When a board receives an application to transfer a water right that is an area subject to an ongoing general water rights adjudication process" -- I think it should just say subject to, not an area. It's not an area, it's the water right subject to the adjudication --

"The board shall consult with ecology prior to processing the application," and I don't know what that means. Does that mean we can't accept them? Does it mean we can't process them? Does it mean we can't look at them?

And every transfer that we are going to get been the Yakima basin, Yakima, Kittitas and Benton counties we have to consult with ecology and then ecology is to seek guidance from the pertinent superior court regarding the court's role in administering the water rights that are subject to the adjudication. And then at the end it says, "Ecology shall then advise the board on whether and how the board may address the application." And I understand what we asked for was how to do this in an adjudication, but I don't know how we can continue to accept applications without going to ecology and then all of us going to the court and I'd like that -- I understand we need to address it, particularly after that bifurcated appeal process, but I'd like us to define that more precisely. And I would request that Fred and Janet meet with the three boards in Kittitas, Yakima and Benton counties before this WAC is adopted so we don't stop the whole world while we figure out where we are, because I would view it as being that.

Action: Comment evaluated. Rule modification made.

Response: Water rights are adjudicated pursuant to a particular water body or resource. Generally, adjudication of numerous water rights occurs within a particular basin or watershed. The term "area" refers to a basin in which the water rights are currently undergoing an adjudication. We have altered the language to read, ". . . *water right that is located in . . .*"

The word "processing" may be too broad of a term for this section and we agree that it needed further clarification. This language has been amended to read, ". . . *the board shall consult with ecology prior to taking any action on ~~processing~~ the application. Ecology will seek guidance from the pertinent superior court regarding the court's role in administering the water rights that are subject to the adjudication. Ecology shall then advise the board on whether and how the board may process ~~address~~ the applications.*"

During an adjudication the court of jurisdiction assumes interim management of water resources being adjudicated. Ecology will work through the court to establish procedures through which

changes/transfers can occur. Once established these procedures will remain throughout the course of the adjudication case and will guide both Ecology and the boards.

Your final point refers to the need of Ecology and the board to go to the court for direction. As a party to the case, Ecology is responsible for communicating with the court. Therefore, it is important that the boards communicate directly with Ecology. Ecology can then convey any direction it has received from the court to the boards. Since boards would not be parties to an adjudication, it is not appropriate for boards to work directly with the court; a board should be receiving guidance directly from Ecology.

Section 120 – What assistance is available to water conservancy boards?

Comment 41

Commenter: Mary Burke, Kittitas Co. Water Conservancy Board

Subsection: WAC 173-153-120(4)

Submitted: Orally at public hearing, September 25, 2002, Ellensburg, WA

Comment, question, or recommendation: On page 24, No. (4) it says, "A board may also request and accept assistance and support from the government or governments of the county or counties in which it operates." That, I understand. I wish they would give us some money. But then it says, "as well as from other interested parties." And, you know, boards who operate with no funding usually are happy to take money from people, but when a board is a quasi judicial, set aside, autonomous, separate of local government we need to say who are other interested parties. And the conflict of interest situation, I think that's a little awkward.

Action: Comment evaluated. No rule modification made.

Response: There are actually two issues raised here. One is monetary assistance. RCW 90.80.060(2) states a board may accept grants. It does not specify that acceptance of grant funds is limited to county legislative authorities. The second issue is one of providing direct overhead assistance such as administrative support, meeting space, file space, board address, etc. This support may not necessarily be from the county. Some boards accept assistance from the local conservation district, Dept. of Agriculture, or other local entities.

Comment 42

Commenter: Mary Burke, Kittitas Co. Water Conservancy Board

Subsection: WAC 173-153-120(6)

Submitted: Orally at public hearing, September 25, 2002, Ellensburg, WA

Comment, question, or recommendation: No. (6) I guess is okay, but I'd like it explained further. At the bottom of page 24, "Technical assistance and training provided to a board is not subject to the Open Public Meetings Act." So, I assume that means we can meet without having a meeting subject to the Open Public Meetings Act, but in the other sections where we're getting technical assistance from the Department, then that might bear upon an application and I think we -- I'd like to think about that a little more.

Action: Comment evaluated. No rule modification made.

Response: When board commissioners participate in training or receive technical assistance from Ecology, they are not subject to the Open Public Meetings Act. Training and technical assistance do not involve decision making on water right change applications. The purpose of training is to educate board commissioners regarding the most current water law practices and any changes to state water law or case law. Technical assistance is provided to boards by Ecology upon request by the boards. It provides boards an opportunity to receive guidance on difficult or complex water right change applications they are processing. As stated in WAC 173-153-120(5), Ecology does not dictate or otherwise direct any board to reach a specific conclusion regarding any aspect of application processing.

Section 130 – How are records of decision and reports of examination made by a water conservancy board?

Comment 14

Commenter: Darryll Olsen, Ph.D., Chairman Benton Co. Water Conservancy Board

Subsection: WAC 173-153-130(4) and (6)

Submitted: In writing

Comment, question, or recommendation: Sec. 173-153-130 Records of Decision and Reports of Examination. We would suggest here you clarify that forms or formats for the ROE/ROD are based on joint review or development between WADOE and the Boards. There has been considerable change to these documents during the past two years (including Ecology’s “old” format) and further changes will likely be made as well, based on input from both parties.

Action: Comment evaluated. No rule modification made.

Response: The reference to forms for the record of decision and report of examination has been included to standardize the forms. RCW 90.80.070(4) identifies a record of decision and report of examination. To clarify this in rule, information required to be included in the record of decision (ROD) and report of examination (ROE) is identified in WAC 173-153-130(4) and (6) respectively. Both forms have been created based on the requirements as reflected in the statute and the rule.

In addition, as the number of boards and board commissioners increases, there are many diversified ways of writing and interpreting language associated with the records of decision and reports of examination. Standardizing the record of decision and the report of examination provides a more consistent, recognizable, and understandable document for the general public to review on the Internet.

It is possible that forms may change or be updated. In practice, if there is a need in the future to change these forms used by boards, every effort will be made to involve boards to be sure that the changes generally reflect board needs, the work that they conduct, as well as the requirements of law.

Comment 43

Commenter: Mary Burke, Kittitas Co. Water Conservancy Board

Subsection: WAC 173-153-130(5)

Submitted: Orally at public hearing, September 25, 2002, Ellensburg, WA

Comment, question, or recommendation: On page 25, "What's included in the report of examination?" I think we need a little more explanation of exactly what it is that we're required to do here. It says, "It is the responsibility of the water conservancy board to ensure that all issues identified during its evaluation of application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations." And I think it would be helpful if we said something there to the effect that those comments that deal with the application in front of us or something, because there are people who make comments that are in general about water situations that don't necessarily need to appear on that particular application.

Action: Comment evaluated. Rule modification made.

Response: Ecology agrees that the comments considered by boards should be relevant to the proposed water right change. The language in the proposed rule amendment under WAC 173-153-130 has been modified to read, "... *relevant issues identified*. . ."

Comment 44

Commenter: Mary Burke, Kittitas Co. Water Conservancy Board

Subsection: WAC 173-153-130(6)(d)(i)

Submitted: Orally at public hearing, September 25, 2002, Ellensburg, WA

Comment, question, or recommendation: Page 26, this is under (d) (i), "Whether, and to what extent, a valid water right exists," and I found that addition of the phrase "and to what extent" both confusing and unnecessary. I understand we need to say whether or not a valid water right exists, but "whether and to what extent" I don't find that definition anywhere else, either.

Action: Comment evaluated. No rule modification made.

Response: A necessary evaluation in any change/transfer decision is to tentatively determine that there is all or a portion of a water right to be changed. In order to make a tentative determination the board must determine how much, or to what extent, of that water right exists. In this context, "extent" means the character, authority, and limitation associated with the water right. It is possible that the extent of a valid water right may be less than what is documented on a water right document (e.g., certificate, permit, claim, etc.). It is possible that a portion of that water right may have relinquished under chapter 90.14 RCW or been abandoned. When processing change applications it is a board's responsibility to determine that there is a water right associated with the application by establishing:

- Whether a water right exists at all (validity); and
- The extent that all or a portion of the water right is eligible for change/transfer.

Comment 45

Commenter: Mary Burke, Kittitas Co. Water Conservancy Board

Subsection: WAC 173-153-130(6)(d)(vi)

Submitted: Orally at public hearing, September 25, 2002, Ellensburg, WA

Comment, question, or recommendation: Top of page 27. This addresses public interest and I think that's slightly better, but I'd like to think about that a little bit and perhaps be able to discuss that with Janet, if that's acceptable in this process.

Action: Comment evaluated. No rule modification made.

Response: Ecology staff will provide technical assistance and are available to board commissioners to answer questions upon request of the board.

Section 140 – What is the process for notifying parties of a record of decision and report of examination?

Comment 46

Commenter: Mary Burke, Kittitas Co. Water Conservancy Board

Subsection: WAC 173-153-140(2)

Submitted: Orally at public hearing, September 25, 2002, Ellensburg, WA

Comment, question, or recommendation: On page 29, these are what documents need to be sent to ecology and I can't understand how additional documents -- I think the document should be sent when we send them and I was a little confused by what that means. So, perhaps it could be just stated a little bit plainer.

Action: Comment evaluated. Rule modification made.

Response: The language in WAC 173-153-140(2) has been reworded for clarity and now reads:

(2) Within five business days of a board's decision, ~~t~~The board shall simultaneously mail to all parties identified in subsection (1) of this section a paper copy of the following:

(a) ~~its~~ The record of decision; ~~and~~

(b) The report of examination;

(c) The application;

(d) Public notices; and

(e) Attachments to the application. ~~documents supporting the decision, within five business days of the board's decision.~~

The board shall state to the parties receiving the record of decision and report of examination that it has been simultaneously sent to ecology. Whenever boards have the capacity to do so, they must transmit a signed electronic copy of the record of decision and report of examination to the ecology regional office on the same day that copies of the decision are mailed or hand-delivered. ~~The paper copy of the transmittal must include:~~

~~_____ (a) The record of decision;~~

~~_____ (b) The report of examination;~~

~~_____ (c) The application;~~

~~_____ (d) Public notices; and~~

~~_____ (e) Attachments to the application.~~

Comment 47

Commenter: Mary Burke, Kittitas Co. Water Conservancy Board

Subsection: WAC 173-153-140(4)

Submitted: Orally at public hearing, September 25, 2002, Ellensburg, WA

Comment, question, or recommendation: No. (4), "Any comments received by a board regarding its record of decision within thirty days after ecology's final decision must be forwarded to ecology within five business days of the board's receipt of such comments by the board." I think we need to define what's "receipt by the board" because it can be sent to our staff or our office sometimes and we in our bylaws have called that for applicant's purposes receipt by the board and we can't always do this within five business days. That's just a too short turnaround time. You know, we don't have a permanent office always and enough staff.

Action: Comment evaluated. Rule modification made.

Response: Ecology recognizes that boards are not necessarily able to check their mail on a routine basis. The language in WAC 173-153-140(4) has been clarified to define more clearly what is meant by "receipt."

Your comment that boards require more time than five days to forward comments is also noted. The need for a short turnaround relates to the timeliness of responding to any appeal of Ecology's order. There is a 30 day appeal period once Ecology issues its final order on a record of decision. In addition, Ecology has certain deadlines to meet shortly after an appeal is filed. In case an appeal is filed on an Ecology order, it is important that Ecology receives any and all information that may be related to that appeal in a timely fashion.

Section 150 – What is ecology's review process of a board's record of decision?

Comment 7

Commenter: Bob Rolfness, Grant Co. Water Conservancy Board

Subsection: WAC 173-153-150(1)

Submitted: In writing

Comment, question, or recommendation: Page 33 WAC 173-153-150 I'm in complete agreement. But suggest DOE could supply the WCBs with the software to convert their submitted RODs to the format used to post it on the web site for public review. All WCBs have computers and there isn't a need to say words like we "could" submit an electronic file copy. Just have us also submit a MICROSOFT WORD format file of the ROD. Problem is all of us can easily submit such a file, but it isn't a signed copy as would be required by the proposed WAC. To do this requires scanning or translation software most do not have. Hence my note about the software.

Action: Comment evaluated. No rule modification made.

Response: Your suggestion could ultimately provide a more consistent process for Ecology as we review records of decision. However, it is not practical, nor is it provided for in statute, to require electronic submission of documents by boards. Some boards do not have the capability of providing electronic documents that may also require original signatures of board commissioners. In addition, many boards rely on specific resources provided by individual commissioners serving on the board. These resources may no longer be available upon the turnover of a board commissioner. For example, a commissioner currently serving on a board may have a computer with the necessary capability. However, upon the termination of the commissioner's service to the board, the resource may be taken from the board as well. Ecology has the scanning capability and staff to support the technology for uploading documents for posting on the Internet. While it is helpful for Ecology to receive the documents electronically, it cannot be required.

Comment 15

Commenter: Darryll Olsen, Ph.D., Chairman Benton Co. Water Conservancy Board

Subsection: WAC 173-153-150(1)

Submitted: In writing

Comment, question, or recommendation: Sec. 173-153-150 Ecology's Review of Board's Record of Decision. There may be some minor confusion in Sec. (1) regarding electronic posting of the "signed" decision relative to the "approved" decision. We send an electronic version with the Board chairman's (electronic) signature on the ROE/ROD, and attach the actual ROD signature sheet to the ROE/ROD. We suggest using the term "approved" rather than "signed" to avoid any confusion.

Action: Comment evaluated. No rule modification made.

Response: Ecology disagrees with using the term "approved" in this section. Pursuant to RCW 90.80.070(5), a board may deny a proposed water right transfer. Ecology is required to post all decisions whether they are denials or approvals. It would not be practical, nor is it provided for in statute, to state that an electronic copy of the record of decision (ROD) "approved" by all board commissioners will be posted, since it is possible that some RODs may be denied and these are posted as well.

The definition of the "record of decision" defined in WAC 173-153-030 states, ". . . the written conclusion reached by a water conservancy board regarding a transfer application, *with documentation of each board commissioner's vote on the decision.*" When the decision is posted on the Internet, we believe it is important that the ROD provides the public with the details as to how each commissioner voted on the proposed transfer. This is especially true where a person has the right to raise a conflict of interest challenge to Ecology as provided in RCW 90.80.120(2)(b), or to file an appeal as provided in RCW 90.80.120(2)(c) if he/she believes a commissioner should have recused him or herself from a decision on a proposed water right transfer.

Comment 16

Commenter: Darryll Olsen, Ph.D., Chairman Benton Co. Water Conservancy Board

Subsection: WAC 173-153-150(9)

Submitted: In writing

Comment, question, or recommendation: Sec. 173-153-150 Sec. 5. The WADOE should include a provision for *consultation with the Board* prior to issuing any remand of a completed Board decision, as related to this section. This need for this consultation should be obvious.

Action: Comment evaluated. No rule modification made.

Response: Your comment reflects language offered in an earlier draft version of the rule. The language you suggest is reflected in WAC 173-153-150(9) of the current proposed rule. This subsection discusses the option for a board to "withdraw" an application from Ecology if

Ecology has not yet formally acted on a record of decision. The decision to withdraw an ROD from Ecology is a decision of the board that must be made at an open public meeting of the board. It must be documented in writing on a *Decision to Withdraw a Record of Decision*, form number 040-107. The purpose of the form is to be sure there is clear communication with all parties of the board's intent. The decision must be made at an open public meeting of the board.

Remanding a board's record of decision back to the board is identified in WAC 173-153-150(7) and directly reflects the language in statute. The statute authorizes Ecology to determine if a board commissioner should be disqualified. Ecology has decided to retain that discretion in the rule. In practice, however, we anticipate that the board and Ecology should communicate on issues raised during Ecology's review of the record of decision, including conflict of interest concerns.

Comment 17

Commenter: Darryll Olsen, Ph.D., Chairman Benton Co. Water Conservancy Board

Subsection: WAC 173-153-150(10)

Submitted: In writing

Comment, question, or recommendation: Sec. 173-153-150 Sec. 7. If WADOE issues a rejection order for a Board decision, then the WADOE must explain in detail why the rejection has been issued, including an appropriate legal assessment where appropriate. That is, the WADOE must fully explain its action, not just state the action as a conclusion. *The level of such detail should be no less than that provided by the Board to reach its decision.*

Action: Comment evaluated. No rule modification made.

Response: Your comment reflects language offered in an earlier draft version of the rule. The language you suggest is reflected in WAC 173-153-150(10) of the current proposed rule. This subsection identifies the parties notified of any order issued by Ecology relating to a record of decision.

However, your suggestion is directly reflected in the language of subsection (6) which states, in part, *"If ecology reverses the record of decision by the board, ecology shall send the applicant and the board an order reversing the record of decision with a detailed explanation of the reasons for the reversal."* This language should eliminate the concerns you have raised.

IV. Summary of public involvement opportunities

A committee representing tribes, environmental interests, board commissioners, and Ecology staff reviewed the initial draft of the rule and provided comments. All board commissioners and counties were also asked to participate in reviewing the initial drafts of the rule.

A focus sheet was prepared and sent out July 1, 2002 to 1500 interested parties announcing the proposed rule amendments. The focus sheet also announced the posting of the proposed rule amendments on the agency website for public review and informal comments through July 19, 2002.

A news release was issued on September 4, 2002 announcing the upcoming public hearings and soliciting comments on the proposed rule amendments.

The Water Resources Program solicited both written comments and oral testimony on the proposed rule amendments. The notice of the proposed rule was filed with the Code Reviser on August 16, 2002 and published in the State Register on September 4, 2002. A comment period and hearing notice on the proposed rule-making was mailed and emailed to about 1500 interested persons. The comment period extended from September 4 to October 4, 2002. The Water Resources Program conducted three public hearings. Following are the public hearing dates, places, and attendance:

9/24/02	Spokane Spokane Falls Community College	Attendance: 4	Comments: 0
9/25/02	Ellensburg Hal Holmes Center	Attendance: 5	Comments: 1
9/26/02	Lacey Ecology Headquarters	Attendance: 2	Comments: 0

The hearings were announced in the major local newspapers of the cities in which the hearings were held. These newspapers are as follows:

- Spokane – The Spokesman-Review, September 11, 2002
- Ellensburg – The Ellensburg Daily Record, September 11, 2002
- Lacey – The Olympian, September 11, 2002

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APPENDIX A
WSR 02-17-062
PROPOSED RULES
DEPARTMENT OF ECOLOGY

[Order 01-13 -- Filed August 16, 2002, 11:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-01-129.

Title of Rule: Water Conservancy Boards (WCBs) rule, [chapter 173-153 WAC](#). In 2001, legislation (ESHB 1832) substantially changed the existing statute, [chapter 90.80 RCW](#), regarding WCBs. The proposed rule amendments are intended to make the rule consistent with the amended statute and provide clear guidance to WCBs and ecology staff supporting them.

Purpose: The proposed rule amendments are intended to make the rule consistent with the amended statute and provide clear guidance to WCBs and the ecology staff supporting them.

Other Identifying Information: WCBs are separate units of local governments established by county legislative authorities to process applications to change existing water rights. [Chapter 90.80 RCW](#) and [chapter 173-153 WAC](#) authorize local boards to process water right change applications to assist ecology and provide a localized service to the community.

Statutory Authority for Adoption: [RCW 90.80.40](#) [90.80.040].

Statute Being Implemented: [Chapter 90.80 RCW](#), Water Conservancy Boards.

Summary: The proposed rule amendments are intended to make the rule consistent with the amended statute and provide clear guidance to WCBs and the ecology staff supporting them.

Reasons Supporting Proposal: The proposal makes the rule consistent with the authorizing statute, as amended by the legislature in 2001, and clarifies existing language in the rule.

Name of Agency Personnel Responsible for Drafting: Janet Carlson, Ecology Headquarters, Lacey, (360) 407-6274; Implementation and Enforcement: Janet Carlson/Regional Staff, Lacey, Bellevue, Yakima, Spokane, (360) 407-6274.

Name of Proponent: Department of Ecology, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: This rule establishes procedures the Department of Ecology, WCBs, applicants for water rights transfers, and counties will follow to implement [chapter 90.80 RCW](#). The proposed rule amendments are intended to make the rule consistent with the amended statute and provide clear guidance to WCBs and the ecology staff supporting them.

The rule will affect counties, which are authorized under [chapter 90.80 RCW](#) to create WCBs with final approval by the director of ecology as well as appoint the board commissioners. Counties may also choose to dissolve a board. The rule provides counties with a procedure for implementing these actions. This rule also effects ecology and WCBs. [Chapter 90.80 RCW](#) authorizes ecology to review the records of decision on water right transfers made by WCBs. The department provides technical assistance if requested as well as specific training for all board commissioners. The rule provides ecology staff with procedures and guidelines when implementing these responsibilities.

[Chapter 90.80 RCW](#) authorizes WCBs to make records of decisions on water right transfer applications. They are also required to operate under certain operational statutes such as the Open Public Meetings Act, [chapter 42.30 RCW](#), and the Public Records Act, [chapter 42.17 RCW](#). The rule provides WCBs with guidance as they accept, investigate, and make decisions on water right transfer applications.

Proposal Changes the Following Existing Rules: See Explanation of Rule above.

No small business economic impact statement has been prepared under [chapter 19.85 RCW](#). This rule will not differentially impact small businesses.

[RCW 34.05.328](#) does not apply to this rule adoption. This rule does not subject a violator to a penalty or sanction; does not establish, alter or revoke a qualification or standard for the issuance, suspension or revocation of a license or permit; and does not make a new or significant amendment to a policy or regulatory program. This rule establishes procedures the Department of Ecology, WCBs, applicants for water rights transfers, and counties will follow to implement [chapter 90.80 RCW](#). The proposed rule amendments are intended to make the rule consistent with the amended statute and provide clear guidance to WCBs and the ecology staff supporting them.

Hearing Location: Spokane Falls Community College, Student Union Building, #17 Lounge A-B, 3410 West Fort George Wright Drive, Spokane, on Tuesday, September 24, 2002, at 7:00 p.m.; at the Hal Holmes Center, 210 North Ruby, Ellensburg, on Wednesday, September 25, 2002, at 7:00 p.m.; and at the Department of Ecology, 300 Desmond Drive, Basement Auditorium, Lacey, on Thursday, September 26, 2002, at 7:00 p.m.

Assistance for Persons with Disabilities: Contact Christine Corrigan by September 18, 2002, TDD (360) 407-6006 or (360) 407-6607.

Submit Written Comments to: Janet Carlson, Water Conservancy Board Coordinator, Water Resources Program, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail jaca461@ecy.wa.gov, fax (360) 407-6574, by October 4, 2002.

Date of Intended Adoption: December 7, 2002.

August 15, 2002

Linda Hoffman

Deputy Director

OTS-5892.1

AMENDATORY SECTION(Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-010 What are the purpose and authority((-) of this chapter? The purpose of this chapter is to establish procedures the department of ecology (ecology) ~~((and))~~, water conservancy boards ~~((conservancy boards)))~~, applicants, concerned agencies, and the public will follow in implementing [chapter 90.80 RCW](#)~~((, and in implementing [RCW 90.03.380](#), [90.03.390](#), and [90.44.100](#), which govern the granting of water right transfers)))~~. [Chapter 90.80 RCW](#) authorizes establishment of water conservancy boards and vests them with certain powers relating to water right transfers.

[Statutory Authority: [Chapter 90.80 RCW](#). [99-23-101](#) (Order 98-11), § 173-153-010, filed 11/17/99, effective 12/18/99.]

AMENDATORY SECTION(Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-020 ((Applicability.)) To what does this chapter apply? These procedures apply to the establishment of water conservancy boards ~~((established))~~ in accordance with [chapter 90.80 RCW](#)~~((,))~~ and to ~~((how applications to transfer water rights that are filed with a water conservancy board will be processed)))~~:

(1) How such boards will function when processing water right transfer applications that are filed with a board or that are transferred to a board from ecology at an applicant's request;

(2) Reporting requirements of boards;

(3) How ecology will support and interact with boards; and

(4) How interested agencies and the public may participate in the board process.

[Statutory Authority: [Chapter 90.80 RCW](#). [99-23-101](#) (Order 98-11), § 173-153-020, filed 11/17/99, effective 12/18/99.]

AMENDATORY SECTION(Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-030 ((Definitions.)) How are terms defined in this rule? For the purposes of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

~~((+))~~ "Alternate" means an individual who:

• May serve as an alternate commissioner of a board at the request of the board or the legislative authority or authorities of the county or counties;

• Serves a board in a nonvoting capacity; and

• Cannot take the place of a commissioner on a temporary basis.

"Application" means an application made on an ecology form identified as an Application for Change/Transfer to Water Right, form number 040-1-97 for a transfer of a water right, including those transfers proposed under authority of [RCW 90.03.380](#), 90.03.390 and 90.44.100. ~~((Application generally refers to filings made on an ecology form titled "application for change/transfer of water right," number 040-1-97, or as that form may be amended by ecology in the future.~~

~~—(2) **"Conditional decision"** means the conclusion reached by an individual conservancy board regarding approval or denial of an application to transfer an existing water right.~~

~~—(3)) A board may supplement the application with additional forms or requests for additional documentation. These forms and documentation become a part of the application.~~

"Board" means a water conservancy board pursuant to [chapter 90.80 RCW](#).

"Commissioner" means an individual appointed to serve as a voting member on a water conservancy board through a written statement by the legislative authority or authorities of the county or counties.

"Consumptive use" means use of water whereby there is a diminishment of the water source.

~~((4)) **"Director"** means the director of the department of ecology.~~

"Ecology" means the department of ecology.

"Ecology regional office" means the water resources program at the ecology regional office designated to a board as the office where the board shall interact as identified within this chapter.

"Geographic area" means an area within the state of Washington in which an established board would have authority to process water right transfer applications. This area is identified by the legislative authority or authorities of the county or counties seeking to establish the water conservancy board. The area may be a single county, more than one county, a single water resource inventory area, or more than one water resource inventory area. If the identified geographic area contains all or part of more than one county, the counties involved must identify a "lead county" for certain administrative purposes.

"Lead county" means the county legislative authority with which ecology will communicate for administrative purposes in cases where a water conservancy board's geographic area includes more than one county legislative authority.

"Nonwater right holder" means, solely for the purpose of satisfying [RCW 90.80.050\(2\)](#) in regard to determining whether a potential water conservancy board commissioner is a "nonwater right holder," any party who:

- Does not meet any of the criteria of a water right holder as defined in this section; or
- Receives water solely through a water distributing entity.

"Record of decision" means the written conclusion reached by a water conservancy board regarding a transfer application, with documentation of each board commissioner's vote on the decision. The record of decision must be on a form provided by ecology and identified as a Record of Decision, form number 040-105.

"Report of examination" means the written explanation, factual findings, and analysis that support a board's record of decision. The report of examination is an integral part of the record of decision. The report of examination must be on a form provided by ecology and identified as Water Conservancy Board Report of Examination, form number 040-106.

"Source" means the water body from which water is or would be diverted or withdrawn under an existing water right which an applicant has proposed to be transferred.

~~((5))~~ **"Transfer"** means ~~((an alteration, in whole or in part, in the point of diversion or withdrawal, purpose of use, place of use, or change or amendment of a water right, or other limitation or circumstance of water use approved in accordance with))~~ a transfer, change, amendment, or other alteration of part or all of a water right, as authorized under [RCW 90.03.380](#), 90.03.390 or 90.44.100.

"Trust water right" means any water right acquired by the state under chapter 90.38 or 90.42 RCW, for management in the state's trust water rights program.

"Water conservancy board coordinator" means the person designated by the director or his or her designee to coordinate statewide water conservancy board activities, communication, and training, and to advocate for consistent statewide implementation of [chapter 90.80 RCW](#) and [chapter 173-153 WAC](#).

"Water right holder" means, solely for the purpose of satisfying [RCW 90.80.050\(2\)](#) in regard to determining whether a potential water conservancy board commissioner is a "water right holder," any individual who asserts that he or she has a water right and can provide appropriate documentation of a privately owned water right which is appurtenant to the land that they own or in which they have a majority interest.

[Statutory Authority: [Chapter 90.80 RCW](#). [99-23-101](#) (Order 98-11), § 173-153-030, filed 11/17/99, effective 12/18/99.]

AMENDATORY SECTION(Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-040 ~~((Creation of))~~ How is a water conservancy board~~((-))~~ created?
~~((Counties))~~ All eligible entities identified in this section under subsection (1)(a) of this section are encouraged to consult with ecology when considering ~~((formation))~~ creation of a water conservancy board. In accordance with [chapter 90.80 RCW](#), boards may have either three or five commissioners and must be established to serve an identified geographic area, as defined in [WAC 173-153-030](#). A newly established board cannot include in the geographic area in which it will serve any area that overlaps with a geographic area served by an existing board.

(1) Creation of a water conservancy board is accomplished by the following steps:

(a) A resolution or petition is proposed to or by the legislative authority or authorities of a county or counties;

(b) Public notice;

(c) Public hearing(s);

(d) Adoption of a resolution creating the board by the legislative authority or authorities of the county or counties;

(e) When a board is created by more than one county legislative authority, a lead county is designated;

(f) A petition is submitted to the director; and

(g) The director must approve the creation of a board.

Where is the resolution or petition calling for the creation of a board submitted?

(2) A resolution or petition calling for creation of a water conservancy board must be submitted to the ((county)) legislative authority ((calling for formation of a water conservancy board. The)) or authorities of the county or counties in which the board would serve.

Who can initiate a petition calling for the creation of a board?

(3) A resolution or petition may be initiated by the following entities:

((i)) (a) The ((county)) legislative authority or authorities of the county or counties which would be served by the board;

((ii)) (b) The legislative authority of an irrigation district, a public utility district that operates a public water system, a reclamation district, a city operating a public water system, or a water-sewer district that operates a public water system;

((iii)) (c) The governing body of a cooperative or mutual corporation that operates a public water system serving one hundred or more accounts;

((iv)) (d) Five or more water right((s)) holders ((who divert water for use in the county)), in the geographic area which would be served by the board, who divert or withdraw water for a beneficial use, or whose nonuse of water is due to a sufficient cause or an exemption pursuant to [RCW 90.14.140](#); or

((v)) (e) Any combination of the above((s)).

What information must be included in the proposed resolution or petition calling for the creation of a board?

(4) The resolution or petition must include:

((i)) (a) A statement ((of)) describing the need for the board;

((ii)) (b) Proposed bylaws that will govern the operation of the board;

~~((iii) A)~~ (c) Identification of the geographic ((boundaries where there is an initial interest in transacting water sales or transfers)) area within which the board would serve; and

~~((iv))~~ (d) A description of the proposed method(s) for funding the operation of the board((;
~~(e) A public hearing must be held by the county legislative authority on the proposed creation of the board;)).~~

~~((d))~~ **What notice is given to the public regarding the proposed creation of a board?**

(5) A public notice must be published in a newspaper of general circulation in the county or, if the board would serve more than one county, a public notice must be published in a newspaper of general circulation in each county in which the board would serve. The notice(s) must be published not less than ten days((; nor)) and not more than thirty days((;)) before the date of a public hearing ((to be held by the county legislative authority)) on the proposed creation of the ((water conservancy)) board. The notice(s) shall describe the ((time, date, place and purpose of the hearing, as well as the));

(a) Time;

(b) Date;

(c) Place;

(d) Purpose of the hearing; and

(e) Purpose of the board.

Notice must be sent to the ecology((s)) regional office at the time of publication of the public notice, and an effort ~~((should))~~ shall be made to ensure that any watershed planning unit ~~((or))~~ and Indian tribe with an interest in water rights in the ~~((county))~~ area to be served by the board also receives the notice((;)).

~~((e))~~ **How many public hearings must be held for the creation of a board?**

(6) At least one public hearing on the proposed creation of the board must be held by the legislative authority of each county in which the board would serve.

What must be included in the adopted resolution which establishes a board?

(7) If the legislative authority or authorities of the county or counties decide to establish a board after the public hearing(s) a resolution must be adopted by the ~~((county))~~ legislative authority or authorities of the county or counties, approving the creation of ~~((a water conservancy))~~ the board((; and

~~(f) The county legislative authority shall identify and select county residents who wish to participate on the county's water conservancy board.~~

~~(2) Ecology will approve or deny creation of a water conservancy board within forty-five days of receiving;)).~~ The resolution must describe or include:

- (a) The need for the board;
- (b) The geographic area to be served by the board;
- (c) The method or methods which will be used to fund the board;
- (d) Whether the proposed board will consist of three or five commissioners;
- (e) The designated lead county if a board is proposed which would serve in more than one county; and
- (f) A finding that the creation of the board is in the public interest.

What is included in a petition to ecology for the creation of a board?

- (8) The petition submitted to ecology to create the board must include the following:
 - (a) A copy of ~~((a))~~ the resolution or petition to or by the ~~((county))~~ legislative authority or authorities of the county or counties calling for the ~~((formation of a water conservancy board))~~ creation of a board. If a board is proposed which would serve in more than one county, the resolution shall be provided by the lead county as designated under subsection (7)(e) of this section. If five water right~~((s))~~ holders who divert or withdraw water for ~~((use in the county initiated the petition, it must include their names, addresses, and documentation as to the water rights held by the petitioners. Documentation may include the permit number, certificate number, or claim number of the petitioner's water right. The petition must include a description of how the water conservancy board will be funded;~~
 - ~~—(b) An affidavit of publication for the public notice that appeared in a newspaper of general circulation in the county not less than ten days nor more than thirty days before the date of the public hearing on the proposed creation of the board;~~
 - ~~—(e))) beneficial use, or whose nonuse of water is due to a sufficient cause or exempt pursuant to [RCW 90.14.140](#), in the county or counties which initiated the petition, the petition must also include the names and addresses of the petitioners;~~
 - (b) A summary of the public testimony presented during the public hearing~~(s)~~ conducted by the ~~((county))~~ legislative authority or authorities of the county or counties in response to the resolution or petition to ~~((form a water conservancy))~~ create a board. The summary shall ~~((include a title and a date for))~~ be clearly identified and include the date of the hearing;
 - ~~~~((d))~~ (c) A copy of the resolution adopted by the ~~((county))~~ legislative authority or authorities of the county or counties approving the creation of a water conservancy board. The resolution must include ~~((a method for funding the proposed water conservancy board))~~ all elements described in subsection (7) of this section; and~~
 - ~~~~((e))~~ (d) A copy of the board's proposed bylaws.~~
- ~~((3) Ecology))~~ **What is the process for the director to approve or deny the creation of a water conservancy board?**

(9) Upon submission to the water conservancy board coordinator of the required documentation pursuant to subsection (8) of this section, the director will determine ((if)) whether the creation of a water conservancy board will further the purposes of the law and ((will)) be in the public interest. The public interest includes, but is not limited to, whether ecology has sufficient staffing resources to provide the necessary training, monitoring, and technical assistance to the board and to make timely responses to the board's ((anticipated conditional)) records of decisions ((on applications)).

~~((4) Based on its determination, ecology will approve or deny the formation of the water conservancy board. If formation of a water conservancy board is approved, ecology will include a description of the training requirements as outlined in [WAC 173-153-050](#) for water conservancy board members in its approval.~~

~~—(5)(a) Ecology may revoke legal authority of a board to make conditional decisions in the following circumstances:~~

~~—(i) If the board fails to render a conditional decision for a period of not less than two years; or~~

~~—(ii) If the board demonstrates a pattern of ignoring legal principles and requirements in its processing of applications or in its conditional decisions; or~~

~~—(iii) If requested by the county legislative authority that called for the board's formation.~~

~~—(b) The board will be allowed thirty days to respond to any revocation before it becomes effective. Ecology may reverse the revocation based upon the board response:)) (10) The director's determination regarding creation of the board shall be made within forty-five days of receiving all items listed in subsection (8) of this section.~~

(11) If creation of a board is approved, ecology will include in its notice of approval any unique conditions or provisions under which the approval is made, if any, and a description of the initial training requirements for board commissioners as outlined in [WAC 173-153-050](#).

[Statutory Authority: [Chapter 90.80 RCW](#), [99-23-101](#) (Order 98-11), § 173-153-040, filed 11/17/99, effective 12/18/99.]

NEW SECTION

WAC 173-153-042 How are water conservancy board commissioners appointed and the length of their terms determined? How do counties notify ecology of board commissioner's appointments and terms?

(1) Upon approval of a new board by ecology, or upon approval of restructuring the number of commissioners on an existing board, the legislative authority of the county or the lead county shall submit to ecology's water conservancy board coordinator a written statement identifying the individuals appointed to the board. The statement must include:

(a) The name, mailing address, and phone number or other contact information of the commissioners;

(b) The terms of office of the commissioners; these terms of office must be staggered as described in [RCW 90.80.050](#)(1).

What is the responsibility of the county or lead county when a board commissioner's term expires or a board position becomes vacant?

(2) Upon the expiration of a board commissioner's term, the appropriate legislative authority or authorities of the county or counties shall either:

(a) Reappoint the incumbent commissioner; or

(b) Appoint a new commissioner to the board. A written statement including the information as described in subsection (1) of this section shall be submitted to ecology's water conservancy board coordinator.

(3) In the event a board position becomes vacant, the legislative authority or authorities of the county or counties shall appoint a new commissioner in accordance with [RCW 90.80.050](#)(2). A statement as described in subsection (1) of this section must be submitted to ecology's water conservancy board coordinator. The new commissioner shall fill the vacancy only for the remainder of the unexpired term and, upon completion of the unexpired term, may be reappointed, as described in subsection (2) of this section, to serve a full six-year term.

What are the terms of board commissioners?

(4) Initial terms of commissioners appointed to a newly created board shall be staggered as described in [RCW 90.80.050](#).

(5) Upon the expiration of the initially appointed commissioners' terms, all subsequent appointments shall be for six-year terms.

(6) The initial terms of office of board commissioners on a restructured board shall be staggered as set forth in [RCW 90.80.050](#). As each of the commissioners' term of office expires, newly or reappointed commissioners shall all be appointed to six-year terms. However, in order to maintain staggered terms, regardless of the date on which such commissioners may be appointed or reappointed, the expiration of all commissioners' terms shall be the same day and month as the expiration of the term of office of the first commissioner appointed to the board, varying only in the year of expiration.

NEW SECTION

WAC 173-153-043 How can a board's authority be revoked or the board dissolved?

Revocation:

(1)(a) Ecology may revoke legal authority of a board to make any decisions regarding water right transfers for reasons which include, but are not limited to, the following:

(i) If the board fails to issue a record of decision for a period of two years or more from the date the board was approved or from the date that the last record of decision was issued; or

(ii) If the board demonstrates a pattern of ignoring statutory and regulatory requirements in its processing of applications or in its records of decision; or

(iii) If requested by the legislative authority or authorities of the county or counties that called for the board's formation.

(b) The board will be allowed thirty days to respond to any revocation before it becomes effective. Ecology may reverse the revocation based upon the board response.

Dissolution:

(2)(a) The legislative authority of a county or lead county may adopt a resolution to dissolve a board.

(b) Ecology may petition the legislative authority of the county or lead county, with a copy to the board, for dissolution of a board.

(c) Upon resolution by the legislative authority of the county or lead county to approve the dissolution of a board, the board will be allowed thirty days after the date of the resolution to respond to the petition for dissolution.

(d) The resolution by a county or lead county to approve the dissolution of a board will become effective thirty days after adoption of the resolution.

(e) The legislative authority of the county or lead county may reverse the dissolution based upon the board's response.

NEW SECTION

WAC 173-153-045 What is the process for restructuring a board? (1) A board may be restructured as to the number of commissioners on the board and the geographic area of its jurisdiction.

(2) A board, a county legislative authority, or a lead county legislative authority may request to restructure an existing board within its geographical jurisdiction. It is suggested that the legislative authority or authorities of the county or counties and the existing board communicate and work cooperatively during the board restructuring process.

(3) The legislative authority or authorities of the pertinent county or counties shall hold a public hearing and adopt a resolution including:

(a) The manner of restructuring and the need for restructuring the board;

(b) The number of commissioners to serve on the board;

(c) The proposed geographic area of jurisdiction of the board;

(d) If the proposed geographic area of jurisdiction is restructured to include more than one county legislative authority, the legislative authorities of each county included within the restructuring shall identify a lead county; and

(e) A summary of the public testimony presented during the public hearing(s) conducted by the legislative authority or authorities of the county or counties in response to the resolution to restructure a board. The summary shall be clearly identified and include the date of the hearing.

(4) Upon submission to the water conservancy board coordinator of the required documentation pursuant to subsection (3) of this section, the director will determine whether the

restructuring of a board will further the purposes of the law and be in the public interest as described in [WAC 173-153-040](#)(10).

(5) The director's determination to approve or deny restructuring of the board shall be made within forty-five days of receiving all items listed in subsection (3) of this section.

(6) If the board restructuring is approved, ecology will include in its notice of approval any unique conditions or provisions under which the approval is made, if any, and shall identify the date the restructuring of the board will take effect. The director shall also identify any additional training required of the board if it assumes jurisdiction of a new geographic area.

AMENDATORY SECTION(Amending Order 98-11, filed 11/17/99, effective 12/18/99)

**WAC 173-153-050 What are the training requirements((-)) for board commissioners?
What training is required for newly appointed board commissioners?**

(1) ~~((Before participating in any conditional decision of a water conservancy board, every member is required to complete a training program provided by ecology.))~~ Every commissioner of a board shall complete a training program provided by ecology before participating in any decision concerning a water right transfer application being considered by the board. Attendance at trainings for new commissioners shall be limited to board commissioners, their administrative staff, board alternates, and individuals providing training. Due to the complexity of the training and the need to provide adequate time to focus on questions from board commissioners, the number of participants attending each training session shall be left to the discretion of the water conservancy board coordinator. Training for new commissioners shall be held at least once in the spring and once in the fall depending on, but not limited to:

(a) Whether ecology has sufficient staffing resources to provide the necessary training; and/or

(b) Whether there are sufficient numbers of board commissioners needing training.

(2) Successful completion of the training program will consist of:

(a) ~~((Completing))~~ Receiving at least thirty-two hours of instruction, from or sponsored by ecology, regarding hydrology, state water law, state water policy, administrative and judicial case law developments, field practices, evaluation of existing water rights, and ((applied)) practical experience working with ecology staff on applications for ((transfer of)) water right((s with ecology staff)) transfers; and

(b) Demonstrating an understanding of course materials during training, and demonstrating sufficient mastery of the training curriculum ((by passing)) through an examination ((given)) administered by an ecology employee upon completion of ((the minimum)) training.

~~((2) Ecology will certify in writing to the appropriate county legislative authority the successful completion of the training program for water conservancy board members and staff.))~~

(3) If a board is restructured to modify the geographic area, the director may require additional training of all board commissioners;

(4) Upon a water conservancy board commissioner's or alternate's successful completion of the training, ecology will certify such completion in writing to the county or lead county of the geographic area served by the board. A copy of this letter shall also be sent to the board.

Are there continuing education requirements for board commissioners?

(5) After completing one year of service on a water conservancy board, ~~((members must each year complete))~~ each following year prior to the anniversary of their appointment to the board, commissioners must complete an additional eight hours of continuing education ~~((directed))~~ provided or approved by ecology. Each commissioner shall complete the minimum continuing education requirement before participating in any decision concerning a water right transfer application being considered by a board. Continuing education may include, but is not limited to, readings, a seminar or conference, or field experience ~~((on))~~ regarding, but not necessarily limited to, subjects such as state water law, state water policy, administrative and judicial case law developments, field practices, ~~((the))~~ evaluation of existing water rights, ~~((or))~~ and hydrology.

(6) Ecology may, at its discretion, and in response to ~~((demand))~~ requests, provide training ~~((semiannually))~~ periodically. Ecology may also combine training for more than one board.

How can a board commissioner receive credit for continuing education not provided or sponsored by ecology?

(7) Continuing education training requirements under subsection (5) of this section may be fulfilled through training not provided or sponsored by ecology. However, such training will be accepted only if it is reported to ecology on a form provided by ecology and identified as the Water Conservancy Board Training Credit Request Form, form number 040-104, and approved by ecology as appropriate training.

(8) Board commissioners are encouraged to report to the water conservancy board coordinator all relevant continuing education received.

[Statutory Authority: [Chapter 90.80 RCW](#). [99-23-101](#) (Order 98-11), § 173-153-050, filed 11/17/99, effective 12/18/99.]

AMENDATORY SECTION(Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-060 What is the scope of authority of a water conservancy board~~((s-))~~? (1)
A board has authority to:

(a) Evaluate water right transfer applications and issue records of decision and reports of examination for water right transfers;

(b) Act upon the transfer of water rights to the state trust water right program, when doing so is associated with an application to transfer a water right. Boards are encouraged to immediately contact ecology for technical assistance when acting on changes involving trust water rights;

(c) Establish and maintain a water right transfer information exchange program regarding the sale and lease of water rights; and

(d) Perform other activities as may be authorized under [chapter 90.80 RCW](#), subject to other applicable state laws and regulations.

How does a board process a water right change application?

(2) A ~~((water conservancy))~~ board may accept for processing an application ~~((for))~~ to transfer ~~((of))~~ a surface or ground water right ~~((for processing))~~ if the water right is currently diverted, withdrawn, or used within~~((;))~~ or, if approved, ~~((will))~~ would be diverted, withdrawn, or used within the boundaries of the ~~((county))~~ geographic area in which the board has jurisdiction, exceptions to this are stated in subsection (7) of this section. The application may be for a permanent or ~~((seasonal-))~~temporary~~((;))~~ use.

(a) The board shall investigate the application and ~~((make a determination))~~ determine whether the proposal should be approved or denied and, if approved, under what conditions, if any, the approval should be granted. ~~((In this process))~~

(b) As part of the process described in subsection (2)(a) of this section, boards should determine whether a watershed planning unit is involved in planning related to the source of water that would be affected by the application ~~((and,))~~ being considered. If so, the board should notify the planning unit of the application, and consider comments from the watershed planning unit prior to issuing its ~~((conditional))~~ record of decision.

~~((2)(a) Applications for transfers that propose to use water from the same source must generally be processed in the order in which they were filed. Exceptions are outlined in [chapter 173-152 WAC](#).~~

~~—(b)) (3) Decisions on applications must be made by a board in the order in which the applications were originally filed with the board ~~((or with ecology, if the applications were first filed with ecology))~~. Exceptions are ~~((as))~~ outlined in ~~(([WAC 173-152-050](#) or as follows:~~~~

~~—(i) Applications to alleviate public health and safety emergencies, as specified in [WAC 173-152-050\(1\)](#), may be processed before competing applications; and~~

~~—(ii) If review of an application has begun and the board determines that gathering more information than is available at the time of the review is required, the board need not await the availability of the additional information before reviewing the next application awaiting action.~~

~~—(c) A conservancy)) [RCW 90.03.380](#) and [chapter 173-152 WAC](#).~~

(4) Boards must take into consideration the possible effect of a proposed transfer on the availability of water for ~~((any applications for new water rights, as well as))~~, or possible impairment of, previously filed transfer applications for water from the same source regardless of the order in which applications are processed. This includes any applications for transfers ~~((that were previously))~~ filed with ecology ~~((for water from the same source as the application under consideration by the))~~ or any other water conservancy board. Ecology will cooperate with ~~((conservancy))~~ boards to resolve any problems associated with conflicting applications. ~~((The availability of water for senior applicants, including those applicants who have filed transfer applications with ecology rather than a conservancy board, must not be impaired, regardless of the order in which applications are processed.~~

~~—(3) The~~) (5) Neither the annual quantity nor the instantaneous quantity of water appropriated under a water right may ~~((not))~~ be expanded. For agricultural use, the acreage irrigated may not be expanded, except in ~~((limited))~~ the circumstances allowed in [RCW 90.03.380](#), in which the annual consumptive use under the water right is not increased.

~~((4))~~ (6) As described in [RCW 90.66.065](#), under a family farm permit, surplus waters made available through water-use efficiency may, subject to laws including [WAC 173-152-110](#), be transferred to any purpose of use that is a beneficial use of water.

(7) Any water right or portion of a water right that has not previously been put to actual beneficial use cannot be transferred, except as authorized by [RCW 90.44.100](#)~~((Transfer of previously unused ground water rights under [RCW 90.44.100](#) is limited to changing the place of use and the point of withdrawal.~~

~~—(5) No applicant may be compelled to apply for a transfer with a conservancy board. Applicants have the option of applying directly to ecology rather than a water conservancy board~~), limited only to change to place of use and point of withdrawal and pursuant to [RCW 90.03.395](#) and [90.03.397](#).

Where can an applicant file a water right change application?

(8) If a board has been established in an area where an applicant wishes to apply for a water right transfer, applicants have the option of applying either directly to ecology or to a board.

What happens if two boards have overlapping jurisdictions?

(9) Overlapping jurisdiction occurs because boards may transfer rights into and out of their geographic area. Water conservancy boards may negotiate inter-board agreements to determine which board will act in instances of overlapping jurisdiction. Any such agreement must be filed with the water conservancy board coordinator within fifteen days of its effective date.

(10) In circumstances in which more than one board may have authority to process water right transfers in a particular area, but the boards have not negotiated an inter-board agreement as specified in subsection (9) of this section, an applicant may file an application with either board. For example, if one board has authority to transfer the applicant's water right out of its jurisdiction, while another board has authority to transfer the water right into its jurisdiction, the applicant can apply to either board.

[Statutory Authority: [Chapter 90.80 RCW](#). [99-23-101](#) (Order 98-11), § 173-153-060, filed 11/17/99, effective 12/18/99.]

AMENDATORY SECTION(Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-070 What does an applicant need to know about filing an application for transfer of a water right((-))? How are applications accepted for processing by a board?

(1) ((Water conservancy boards may accept applications for transfer of water rights.)) Ecology will provide water right transfer application forms and applicant instructions to ((water conservancy)) boards, which will make them available to ((prospective applicants)) the public

upon request. All applications to ~~((the water conservancy))~~ a board must be made using the water right application for change/transfer form supplied by ecology, form number 040-1-97.

(2) Boards and ecology shall inform all applicants that the decision to file a transfer application with a ~~((conservancy))~~ board rather than directly with ecology is solely at the discretion of the applicant~~((The conservancy board and ecology will inform any prospective applicants that they have the option of filing either with the board or with ecology.~~

—(2) The)), provided a board is active in the area addressed by the transfer application.

(3) A water right transfer application is considered filed when it is received by a board commissioner, or a designated administrative support person for a board.

(4) An application may propose the transfer of no more than one water right.

(5) A majority vote of a quorum of a board is required to accept an application for processing.

What must a complete application include?

(6) Boards shall ensure that ~~((the))~~ applications ~~((is))~~ submitted directly to them are complete and legible ~~((and is accompanied by the minimum ten-dollar examination fee required by RCW 90.03.470(1). The board may establish and charge additional fees in accordance with RCW 90.80.060(2).~~

—(3) The original application form)). A complete application shall:

(a) Include the minimum ten-dollar examination fee required by [RCW 90.03.470\(1\)](#).

(b) Include any fees that may be established and charged by a board in accordance with [RCW 90.80.060\(2\)](#).

(c) Contain the information requested on the application form as applicable.

(d) Be accompanied by such maps and drawings, in duplicate, and such other data, as may be required by the board. Such accompanying data shall be considered as part of the application as described in [RCW 90.03.260](#).

(7) A board may request that an applicant provide additional information as part of the application by requiring, for example, that the applicant complete additional forms supplemental to the standard application or that applicant prepare and/or provide specific reports regarding aspects of the application.

How is an application number assigned to a water right transfer application filed with a board?

(8) The board shall assign a unique number to a water right transfer application upon acceptance of the application by the board.

(9) The number assigned by the board to the water right transfer application shall be written in ink within the space provided on the application for the application number.

(10) The water right transfer application, public notice, record of decision, and report of examination produced by the board in processing the application shall reference the board-assigned number.

(11) The unique application number is assigned in accordance with the following three-part format:

(a) The first part of the board-assigned application number will identify the board that has accepted the application as follows:

(i) Boards having jurisdiction within a geographic area that is based upon a county boundary or the boundary of multiple counties will begin all application numbers with the first four letters of the name of the county or of the lead county. For example, a board with jurisdiction within Kittitas County will begin each application number with the letters "KITI."

(ii) Boards that have jurisdiction within a geographic area that is based upon a water resource inventory area (WRIA) or multiple WRIs will use the number of the WRIA of jurisdiction or, in the case of multi-WRIA boards, the WRIA of jurisdiction associated with the water right.

(b) The second part of the board-assigned application number will be the last two digits of the year in which the application was accepted. For example, applications that are accepted during the year 2003 will use the digits "03."

(c) The third part of the board-assigned application number will be a sequential two-digit number beginning with the number "01" for the first application accepted after the effective date of this rule and beginning with number "01" for the first application accepted by the board during each subsequent calendar year.

(d) A dash (-) will be used to separate the three parts of the application number as provided within (a), (b), and (c) of this subsection. For instance, the first application accepted by the Kittitas County water conservancy board during the year 2003 will be assigned number KITI-03-01.

Are applications before a board considered dual-filed with ecology?

(12) The board must forward the complete original application form upon which the board has legibly written the board-assigned application number in the space provided for that purpose and the statutory state application fee (~~((must be forwarded by the conservancy board))~~) to the (~~((appropriate))~~) ecology regional office within five (~~((working))~~) business days of the date (~~((of receipt))~~) the board accepts the application for processing.

(13) Within thirty (~~((working))~~) business days from the date (~~((of notice))~~) ecology receives the application from the board, ecology will assign a state water right (~~((control))~~) change application number to the application and inform the (~~((water conservancy))~~) board of the assigned number. The number assigned by ecology will be used for ecology's internal administrative purposes, including the recording of the application within the state water right record. The ecology-assigned number need not be used by the board in processing the application, including within the public notice.

(14) Ecology will open and maintain a file ~~((relating to))~~ regarding the application ~~((that will be maintained))~~ for permanent recordkeeping. Ecology will inform the applicant if additional state fees are due. The board may not process the application until notified by ecology that all statutorily required application fees have been paid.

(15) Upon acceptance of the application by ecology, the application is considered to be filed with both the board and ecology. However, ecology shall not act on the application unless it is notified by the board that the board has declined to process the application and upon receiving a written request from the applicant that ecology process the application.

How can responsibility for processing an application previously filed with ecology be transferred to a board?

~~((4))~~ (16) If an applicant makes a request to a ~~((water conservancy))~~ board that an application previously filed with ecology be ~~((reviewed))~~ considered for processing by that ~~((conservancy))~~ board, the ~~((conservancy))~~ board ~~((must determine whether it will review the application. If the conservancy board determines that it will review that application, the board shall make a))~~ may request ~~((to))~~ that ecology~~((, and ecology shall))~~ forward a copy of the application ~~((and all relevant documents))~~ file to the ~~((conservancy))~~ board. Ecology will comply with the request and the original application will continue to be on file and maintained at ecology but will not be considered as part of ecology's active workload while the application is being processed by the board.

(17) The board shall notify ecology if it accepts the application for processing. The board will assign an application number in accordance with subsection (10) of this section and inform the ecology regional office in writing of the board's application number within five business days of accepting the application.

Can a board decide not to accept an application for processing?

~~((5))~~ (18) By a majority vote of a quorum of a board, a board may decline to process or to continue processing an application at any time. The board ~~((will))~~ must inform the applicant of its decision in writing ~~((of its decision to decline further consideration of the application))~~ within fourteen ~~((working))~~ business days of making the decision. The board must ~~((forward to ecology the working file for the specific transfer and any state application fees that have not previously been forwarded to ecology. The board must also provide a))~~, at the same time, send the ecology regional office a copy of the board's written notice to the applicant. If the basis of the board's decision to decline processing the application is not sufficiently clear from the written notice, ecology may request a further written explanation ~~((to ecology))~~ regarding ~~((its))~~ the board's decision not to process or finish processing the application. The board must provide this additional written explanation within fifteen days of ecology's request.

(19) If a board declines to process or to continue processing an application, it must inform the applicant that the application may be filed with ecology and advise the applicant of the appropriate ecology office where the application should be filed.

Who must receive copies of applications being processed by a board?

~~((6-The))~~ (20) Boards must ensure that copies of ~~((the))~~ application accepted by them for processing are ~~((properly distributed))~~ provided to interested parties in compliance with existing laws, as well as with current ecology memoranda of understanding, policies and other guidance. To assist the boards in this, ecology will provide a list of potentially interested parties which have identified themselves to ecology. Additional interested parties, including Indian tribes, may request copies of applications from boards.

(21) A copy of each application accepted by a board shall be provided to any Indian tribe that has reservation lands or trust lands contiguous with or encompassed within the geographic area of the board's jurisdiction.

[Statutory Authority: [Chapter 90.80 RCW, 99-23-101](#) (Order 98-11), § 173-153-070, filed 11/17/99, effective 12/18/99.]

AMENDATORY SECTION(Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-080 What public notice(;) is given on a water right transfer application before a board? (1) Upon acceptance by a board of a water right transfer application in accordance with [WAC 173-153-070](#)(2), the ~~((water conservancy))~~ board shall publish~~((or require the applicant to publish;))~~ a public notice of the proposed water right transfer ~~((of a water right))~~ in accordance with [RCW 90.03.280](#)(;). This notice must be published at least once a week for two consecutive weeks in the legal notice section of a newspaper of general circulation in ~~((at a minimum))~~ the project area of the county or counties ~~((of proposed water use, diversion and storage of))~~ where the application proposes to use, divert, withdraw and/or store water. Ecology must provide the board with a list of newspapers acceptable for this purpose. The board should consider publishing an additional public notice ~~((may be required))~~ in other areas that ~~((may))~~ could be affected by the transfer proposal. The public notice of each individual application for transfer must include the following information, in the following order:

(a) The applicant's name and city or county of residence;

(b) ~~((Application number assigned by ecology;))~~ The board's assigned water right change application number;

(c) The water right priority date;

(d) A description of the water right to be transferred, including ~~((any identifying))~~ the number of any water right document, that embodies the water right such as a permit, certificate or claim filed under [chapter 90.14 RCW](#), the location of the point of diversion or withdrawal(;); the place of use(;-and); the purpose(s) of use; the period of use; if for irrigation purposes, the total acres irrigated; and the instantaneous rate and annual quantities ~~((authorized))~~ as stated on the water right document;

(e) A description of the proposed transfer(s) to be made, including, when applicable, the proposed location of point(s) of diversion or withdrawal(;-place of use, or instantaneous and annual quantities authorized); the proposed place(s) of use; the proposed purpose(s) of use; if for irrigation purposes, the total number of acres to be irrigated; and the instantaneous rate and annual quantities of water associated with the proposed water right transfer including the description of a transfer that includes only a portion of a water right;

(f) The manner and time limit for filing protests with ecology under [RCW 90.03.470](#) and [WAC 508-12-170](#); and

(g) ~~((Manner and time limit for intervening before the board under [RCW 90.80.070](#)(4).))~~ The manner for providing written and oral comments or other information to the board, including the board's mailing address and the place, date, and time of any public meeting or hearing scheduled to consider the application.

(2) The board may require the applicant to review and confirm the information in the public notice prior to publication. If the board does so, the applicant assumes responsibility for any errors contained in the description of the application published in the public notice.

(3) The board must send a copy of the public notice ~~((will be sent))~~ to the ecology~~((s))~~ regional office at the same time the public notice is submitted for publication.

~~((2))~~ (4) Before acting on an application, the board must first receive a notarized affidavit of publication from each newspaper in which the public notice regarding the application was published ~~((verifying))~~, and the board must verify that publication ~~((correctly))~~ occurred correctly. The board must also allow at least thirty days ~~((for the filing of protests or objections following the last date of publication of the notice before making a final))~~ following the last date of publication of the notice, to allow for protests or objections to be filed with ecology before the board issues a record of decision.

~~((3))~~ (5) The public notice must be republished in all newspapers of original publication when an applicant substantively amends ~~((the))~~ an application for a transfer of a water right subsequent to publication of the notice, or when a substantive error or omission occurs in the publication~~((, the public notice must be republished in all newspapers of original publication, and reviewing agencies)).~~ For the purposes of this subsection, the term "substantive error in publication" refers to, but is not limited to, any item identified in subsection (1) of this section that is omitted from or inadequately characterized in the public notice. All parties who were sent the original application and/or public notice must be sent corrected copies of any amended transfer ~~((proposal))~~ application.

[Statutory Authority: [Chapter 90.80 RCW](#), [99-23-101](#) (Order 98-11), § 173-153-080, filed 11/17/99, effective 12/18/99.]

AMENDATORY SECTION(Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-090 How can protests~~((:))~~ and letters of concern or support on a water right transfer application be submitted to a board? Where is a protest submitted regarding a water right transfer application before a board?

(1) A protest ~~((of an application that has been filed with a water conservancy board))~~ against granting a proposed water right change or transfer, as identified in [RCW 90.03.470](#)(12), must be received by ecology, with the statutory two-dollar protest fee, within thirty days of the last date of publication of the public notice.

(2) Ecology shall provide a copy of the protest to the appropriate board within five days of receipt of the protest.

(3) In accordance with [WAC 508-12-170](#) and 508-12-220, a board will thoroughly investigate all pertinent protests of a transfer application before the board.

(4) Ecology ~~((will))~~ shall consider all pertinent protests during its review of the board's ~~((conditional))~~ record of decision on the application.

(5) Persons inquiring of the board or ecology regarding protest procedures ~~((will))~~ shall be directed to file the protest with ecology. ~~((Ecology will provide a copy of the protest to the appropriate board.~~

~~—(2))~~ (6) Boards must immediately forward to ecology any protests they receive including the two-dollar protest fee.

What is included in a valid protest?

(7) A ~~((valid))~~ protest must include:

(a) The name, address and phone number (if any) of the protesting party;

(b) Clear identification of the transfer ~~((proposal))~~ application being protested; and

(c) A statement ~~((regarding))~~ identifying the basis for the protest. ~~((Proper basis for a protest must include:~~

~~—(a) The impacts of the proposed transfer on other water rights; or~~

~~—(b) The impacts of the proposed transfer on the public interest; or~~

~~—(c) A challenge to the potential extent and validity of the water right proposed to be transferred.~~

~~—(3) The board must immediately forward to ecology any protests that it receives in error, accompanied by the two-dollar protest fee if it was included with the protest.~~

~~—(4))~~ (d) The statutory two-dollar protest fee.

What is the difference between a protest and a letter of concern or support?

(8) Any protest received more than thirty days after the last date of publication of the public notice, or without the required fee, will be filed as a letter of concern.

(9) A letter of support is any comment addressing the benefit of the project proposed in an application.

(10) A party who provides a letter of concern or support regarding an application to a water conservancy board is not considered to be a protesting party unless the party has also filed a valid protest with ecology in compliance with this section.

Will a protest or letter of concern be considered?

(11) Boards must accept and consider any oral or written comments in evaluating an application, in accordance with [chapter 90.80 RCW](#), this chapter, and board bylaws.

[Statutory Authority: [Chapter 90.80 RCW, 99-23-101](#) (Order 98-11), § 173-153-090, filed 11/17/99, effective 12/18/99.]

NEW SECTION

WAC 173-153-100 How does a water conservancy board operate? (1) Water conservancy board meetings must be in compliance with the Open Public Meetings Act, [chapter 42.30 RCW](#). Additionally, minutes of the meetings must be recorded pursuant to [chapter 42.32 RCW](#) and such minutes must be made available for public review upon request.

(2) At the beginning of any meeting or hearing in which any application to change or transfer a water right is to be discussed, or upon which a decision is to be made, those individuals in attendance must be informed that any known allegations of conflict of interest must be expressed in that meeting or hearing or their right to do so may be forfeited in accordance with [RCW 90.80.120](#) (2)(a).

(3) A board may adopt and amend its own bylaws through which board meetings, operations, and processes are governed.

How can a board be contacted by the public?

(4) Each board must designate at least one primary contact person for communicating with ecology and other entities. The board must inform the water conservancy board coordinator of:

- (a) The name of the primary contact;
- (b) How to contact that person; and
- (c) Any changes to the contact information for the primary contact of the board.

(5) Boards are subject to the Public Records Act, [chapter 42.17 RCW](#) and as described in [RCW 90.80.135](#).

AMENDATORY SECTION(Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-110 ~~((Examination of application.))~~ What is involved in the examination of an application before a board? (1) ~~((A water conservancy board shall make its conditional decision on a transfer application based on applicable state law, rules, policies, and ecology guidance. In addition to specific water law, other relevant state laws, including the Growth Management Act, must be considered.))~~ Boards shall base their records of decision and reports of examination regarding a transfer application on applicable state laws and regulations. In addition to specific water law, boards must also consult and consider other relevant state laws, including, but not limited to, the Growth Management Act ([chapter 36.70A RCW](#)).

(2) Generally, a board should conduct a field examination of the site(s) ~~((of the proposal,))~~ identified in the transfer application, and clarify any unclear information by contacting ~~((the applicant, and discuss the concerns of protesters and objectors with the persons who filed them))~~ and discussing the information with the applicant or other appropriate persons.

(3) All relevant information must be ~~((collected))~~ identified, discussed, and considered in the board's examination. This may include the need for a board to collect pertinent detailed

hydrological or hydrogeological information (~~((may need to be collected or other research conducted or compiled))~~) regarding the site(s) involved in the proposal. Any person providing an engineering, hydrologic, geologic and/or hydrogeological analysis on behalf of an applicant with an application before a board must be licensed in accordance with chapter 18.43 or 18.220 RCW, as applicable. The analysis must be certified by the individual's professional stamp.

(4) A board may require ~~((the))~~ an applicant to provide additional information at the applicant's expense, if that information is necessary to render an adequately informed ~~((conditional))~~ record of decision on ~~((the))~~ an application.

~~((3-A))~~ How are comments and protests considered during the examination of the water right transfer application?

(5) Boards may also request that commenters or protestors provide additional information regarding their comments if such information is necessary to render an adequately informed record of decision on an application. Boards may also discuss the concerns raised in comments and protests with the persons who filed them.

(6) Boards must consider all comments and protests received about ~~((the))~~ a pending application(~~((In this process, boards should))~~), whether or not additional information is provided by the protestor or commenter.

(7) Ecology, as is the case with any public agency, may provide formal written or oral comments regarding the application under discussion at a public meeting of the board. However, if ecology does provide formal comments in the context of a public meeting, the comments shall not be taken as giving either technical assistance or direction to the board, any more than any other comments would be so considered.

What other entities must be consulted when a board examines an application?

(8) When public interest applies to the application evaluation or when there may be existing rights that could be impaired, boards shall determine whether an Indian tribe, watershed planning unit, or other governmental body is involved in planning or water management related to the source of water that would be affected by the application. If this is found to be the case, the board ~~((should engage))~~ shall consult the tribe, watershed planning unit, or other governmental body in the board's effort to obtain information concerning the application.

~~((4-A water conservancy))~~ What other information must the board consider in their examination of the application?

(9) Boards must evaluate ~~((the))~~ an application, including ~~((the entire water rights record))~~ all information obtained by the board that is associated with the application, and determine whether or not the transfer as proposed is in accordance with applicable state laws~~((, rules, policies and guidelines of ecology))~~ and regulations. The board must also make a tentative determination as to the extent and validity of the water right proposed to be transferred, as well as whether the transfer can be made without injury or detriment to existing rights~~((, and))~~. The board must evaluate a transfer proposal pursuant to [RCW 90.44.100](#) as to whether the proposed transfer is ~~((not))~~ detrimental to the public interest. Public interest shall not be considered when deciding whether to grant an application for change pursuant to [RCW 90.03.380](#) exclusively.

~~((5) A water conservancy))~~ (10) Boards shall ensure that the requirements of the State Environmental Policy Act (SEPA), [chapter 43.21C RCW](#), and the SEPA rules, [chapter 197-11 WAC](#), have been met before finalizing a ~~((conditional decision, and if determined by the board to be))~~ record of decision. If a board concludes it is appropriate under [WAC 197-11-922](#) through 197-11-944, the board ~~((will))~~ may be the lead agency for SEPA compliance.

~~((6))~~ (11) A ~~((water conservancy))~~ board shall consult with ecology if it encounters new, unusual, or controversial issues in the course of examining an application. Ecology will provide assistance ~~((and advice))~~ as to how to proceed in accordance with existing state laws, rules, ~~((policy and sound))~~ and current ecology policies and administrative practices.

~~((7) If a geographical area within the jurisdiction of a conservancy board is or becomes the subject of an adjudication conducted by a superior court for the determination of water rights,))~~ (12) When a board receives an application to transfer a water right that is in an area subject to an ongoing general water rights adjudication process, the board shall consult with ecology prior to processing the application. Ecology will seek guidance from the pertinent superior court regarding the court's role in administering the water rights that are subject to the adjudication. ((Thereafter,)) Ecology shall then advise the ((conservancy)) board on whether and how the board may ((proceed to evaluate and make conditional decisions on applications for transfers of water rights that are subject to the adjudication being conducted by the superior court. When a board receives an application for transfer of a water right that is in an area subject to an ongoing general water rights adjudication process, and a public notice has been published, the board must send a copy of the public notice regarding the application to ecology, which will then submit the notice to the court conducting the adjudication. When a board makes a conditional decision on a transfer of a water right that is in an area subject to an ongoing general water rights adjudication process, a copy of the conditional decision must be sent to ecology, which will forward the conditional decision to the court conducting the adjudication)) address the application.

[Statutory Authority: [Chapter 90.80 RCW](#). [99-23-101](#) (Order 98-11), § 173-153-110, filed 11/17/99, effective 12/18/99.]

AMENDATORY SECTION(Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-120 ((Interventions and protests.)) What assistance is available to water conservancy boards? (1) ~~((Any water right holder claiming detriment or injury to an existing water right may intervene in the application review process before the water conservancy board. Actions by the water conservancy board are independent from those of ecology. Ecology's final decisions based upon water conservancy board's conditional decisions are subject to administrative and judicial review.~~

—(2) ~~A party who intervenes in a water conservancy board conditional decision is not considered to be a protesting party unless the party has also filed a timely protest with ecology. Protests must be filed with ecology in accordance with [WAC 508-12-120](#) and will be evaluated by ecology concurrently with its review of the water conservancy board conditional decision. Ecology will also consider other objections and comments in the record, including the record of any hearings held by the board, when it makes its review of the board's conditional decision.))~~
The director, or his or her designee, shall assign a representative of ecology to be available to provide technical assistance to each board as provided in [RCW 90.80.055](#) (1)(d).

(2) Upon request by a board, an ecology representative will provide technical assistance as the board:

- (a) Reviews applications for formal acceptance;
- (b) Prepares draft records of decision and reports of examination;
- (c) Considers technical factors; and
- (d) Considers legal factors affecting the board's development of a record of decision.

(3) A board may request and accept additional technical assistance from ecology.

(4) A board may also request and accept assistance and support from the government or governments of the county or counties in which it operates, as well as from other interested parties.

(5) Ecology recognizes that boards are independent entities with the legal right to make records of decision on water right transfer applications without seeking assistance from ecology. However, should a board desire assistance from ecology in processing an application or regarding its administrative functions, ecology will provide technical assistance upon request of the board. This technical assistance may address issues involved in application processing, including procedural requirements and administrative functions, and can include specific information regarding approaches to resolving particular issues. However, in deference to the independent status of boards, such technical assistance shall be solely in the form of guidance and shall not dictate or otherwise direct any board to reach a specific conclusion regarding any aspect of application processing or of a board's administrative functions.

(6) Technical assistance and training provided to a board is not subject to the Open Public Meetings Act.

[Statutory Authority: [Chapter 90.80 RCW](#), [99-23-101](#) (Order 98-11), § 173-153-120, filed 11/17/99, effective 12/18/99.]

AMENDATORY SECTION(Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-130 ((Conditional decision by water conservancy board.)) How are records of decision and reports of examination made by a water conservancy board? (1) A record of decision and report of examination is adopted by a majority vote of a board, as defined in [RCW 90.80.070](#)(4). The ((water conservancy)) board's ((conditional)) record of decision and report of examination must be in writing, and ((its)) the record of decision and report of examination become((s)) part of the public record.

(2) ~~((For applications that are proposed to be denied, the water conservancy board will issue))~~
When a board proposes to deny an application, in whole or in part, the board must issue to both the applicant and ecology a record of decision and report of examination denying the transfer, or a portion of the transfer, subject to review and final determination by ecology.

(3) ~~((For applications for transfer that are proposed to be affirmed, the water conservancy board will issue the applicant))~~
When a board proposes to approve an application, the board must

issue to both the applicant and ecology a record of decision and a ~~((certificate of conditional approval))~~ report of examination approving the transfer, subject to review and final approval by ecology.

What is included in a record of decision?

~~(4) The record of decision ((along with either the certificate of conditional approval or the notice of denial will each address the following))~~ must be prepared on a form provided by ecology and identified as the Record of Decision, form number 040-105, and must include the conclusion of the board as to whether the application is denied or approved and a record of the individual vote or abstention of each participating commissioner or that a commissioner has recused him or herself.

What is included in a report of examination?

(5) It is the responsibility of the water conservancy board to ensure that all issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination.

(6) The report of examination will consist of a form provided by ecology and identified as Water Conservancy Board Report of Examination, form number 040-106, documenting and summarizing the basic facts associated with the decision. This shall include:

(a) Within a section entitled "background":

(i) A description of the water right proposed for transfer ~~((to include the ecology assigned)), including the board-assigned water right change application number, and the board's tentative determination as to the validity and quantification of the right, ((together with a description of))~~ as well as the historical water use information that was considered by the board;

(ii) ~~((A description of any protests, objections or comments, including comments provided by other agencies, Indian tribes, or other interested parties, and the board's analysis of each issue considered, including the name and address of individual intervenors;~~

~~—(iii) A discussion explaining compliance))~~ An explanation of how the board complied with the State Environmental Policy Act; and

~~((b))~~ (iii) A description of any previous change decisions associated with the water right.

(b) Within a section entitled "comments and protests": A description of any protests, and written or oral comments, including:

(i) The names and addresses of the protestors or commenters;

(ii) A description of the issues raised; and

(iii) The board's analysis regarding each issue raised.

(c) Within a section entitled "investigation":

(i) A description of the project proposed by the applicant, including any issues related to development, such as the applicant's proposed development schedule and an analysis of the effect of the proposed transfer on other water rights, pending applications for changes or transfers, and instream flows established under state law;

(ii) A narrative description of any other water rights or other water uses associated with both the current and proposed place of use and an explanation of how those other rights or uses will be exercised in ~~((harmony))~~ conjunction with the right proposed to be transferred;

(iii) If the proposed transfer is authorized under [RCW 90.44.100](#), an analysis of ~~((the effect of))~~ the transfer ~~((on))~~ as to whether it is detrimental to the public interest, including impacts on any watershed planning activity. Public interest shall not be considered if the proposed transfer is authorized pursuant to [RCW 90.03.380](#) exclusively;

(iv) Any ~~((conditional decision or conclusion))~~ information indicating that an existing water right or portion of a water right has been relinquished or abandoned due to nonuse and the basis for the determination;

(v) A description of the results of any geologic, hydrogeologic, or other scientific investigations that were considered by the board and how this information contributed to the board's conclusions;

~~((e))~~ (d) Within a section entitled "conclusions": A list of conclusions that the board drew from the information ~~((related to))~~ compiled regarding the transfer proposal. Conclusions must, at a minimum, describe:

(i) Whether, and to what extent, a valid water right exists;

(ii) Any relinquishment or abandonment of the water right associated with the water right transfer application as discussed in subsection (6)(d)(i) of this section;

(iii) The result, as adopted by the board, of any hydraulic analysis done related to the proposed water right transfer;

(iv) The board's conclusions of issues raised by any comments and protests received;

(v) Whether the transfer proposal will impair existing rights of others; and

(vi) If the proposed transfer is authorized pursuant to [RCW 90.44.100](#), whether it is detrimental to the public interest. Public interest shall not be considered if the proposed transfer is authorized pursuant to [RCW 90.03.380](#) exclusively;

~~((d))~~ (e) Within a section entitled "~~((conditional))~~ decision": A complete description of the board's ~~((conditional))~~ decision, fully and comprehensively addressing the entire application proposal;

~~((e))~~ (f) Within a section entitled "provisions":

(i) Any conditions and limitations recommended ((for inclusion in an approval or)) as part of an approved transfer, and/or any other corrective action necessary to maintain the water use in compliance with state laws ((or rules)) and regulations;

(ii) ((A description of)) Any requirement to mitigate adverse effects ((on other water rights, the water source, or the public interest)) of the project. Mitigation may be proposed by the applicant or the board and be required in the board's decision; and

(iii) A schedule for development and completion of the water right transfer ((to a water right)), if approved in part or in whole, that includes a definite date for completion of the transfer and ((the)) application of the water to an authorized beneficial use.

((5) A water conservancy board's conditional decision and certificate is not a final authorization to transfer the water right. Only after ecology has approved the conditional decision and has issued an order authorizing the transfer, or has failed to act within the time frame established in [RCW 90.80.080](#), is the applicant allowed to initiate the transfer of the water right.) (7) Ecology may request additional information from the applicant or water conservancy board regarding the application and the board's decision, in addition to the requirements of subsection (6) of this section.

(8) A board's record of decision must clearly state that the applicant is not permitted to proceed to act on the proposal until ecology makes a final decision affirming, in whole or in part, the board's recommendation. However, if ecology does not act on a board's recommendation within the time frame established in [RCW 90.80.080](#), the applicant is allowed to initiate the water right transfer pursuant to the board's record of decision after that period of time has expired. It is advised that the applicant not proceed until the appeal period of ecology's decision is complete, in compliance with [WAC 173-153-180](#).

[Statutory Authority: [Chapter 90.80 RCW](#). [99-23-101](#) (Order 98-11), § 173-153-130, filed 11/17/99, effective 12/18/99.]

AMENDATORY SECTION(Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-140 ((Notification of conditional decision.)) What is the process for notifying parties of a record of decision and report of examination? Who is notified of a board's record of decision and report of examination?

(1) ((The water conservancy board shall send notice of its conditional decision as to whether the transfer should be approved or denied, by mail to the applicant, ecology, to any person who protested or objected to the transfer, to any persons who requested notice of its conditional decision, and to any commenting agency or tribe. The board shall transmit notification of its conditional decisions to all parties on the same day, and will note that it has been sent to ecology. Ecology shall identify the location designated for submission of the board's conditional decision.

—(2) Boards must fully document their process of arriving at a conditional decision regarding water right applications. All original public documents received or developed by a water conservancy board and used during its deliberations for decision making for each application for transfer of a water right must be sent, with a clear copy of the conditional decision, to ecology at the location designated by ecology for permanent recordkeeping, within seven working days

~~after the board has rendered its conditional decision. The board must retain a copy of all documents; any documents used in reaching a conditional decision regarding a water right transfer application must not be destroyed or disposed of, except as allowed by state statute.~~

~~— (3) Any comments or objections that are received by the water conservancy board on its conditional decision within thirty days after a final decision is issued by ecology must be forwarded to ecology within five working days, at the location designated for submission of the board's determination.)) Ecology shall identify to all boards the ecology regional office designated for receipt of each board's records of decision. Boards shall hand deliver or send by mail records of decision and reports of examination to:~~

- ___ (a) The applicant;
- ___ (b) The ecology regional office;
- ___ (c) Any person who protested the transfer;
- ___ (d) Any person who requested notice of the board's record of decision;
- ___ (e) Any tribe with reservation or trust lands contiguous with or wholly or partly within the area of jurisdiction of the board; and
- ___ (f) Any commenting agency or tribe.

How is the record of decision and report of examination transmitted?

___ (2) The board shall simultaneously mail to all parties identified in subsection (1) of this section a paper copy of its record of decision and report of examination, and documents supporting the decision, within five business days of the board's decision. The board shall state to the parties receiving the record of decision and report of examination that it has been simultaneously sent to ecology. Whenever boards have the capacity to do so, they must transmit a signed electronic copy of the record of decision and report of examination to the ecology regional office on the same day that copies of the decision are mailed or hand-delivered. The paper copy of the transmittal must include:

- ___ (a) The record of decision;
- ___ (b) The report of examination;
- ___ (c) The application;
- ___ (d) Public notices; and
- ___ (e) Attachments to the application.

___ (3) As stated in [WAC 173-153-130](#), boards must fully document their process of arriving at a record of decision regarding water right transfer applications. Once the board has concluded its work on a water right transfer application, the board must submit to ecology, not less than seven days or more than fourteen days after the completion of ecology's review period, any remaining original documents not previously submitted to ecology in accordance with subsection (2) of this section, and any documents received or developed by the board related to its deliberations

regarding the application upon which it has made a decision. All documents submitted shall be clearly marked with the board-assigned water right change application number on the water right transfer application pursuant to [WAC 173-153-070](#)(7). As noted, the original versions of these documents must be provided to ecology; copies are not acceptable for submission. These documents must be sent to the ecology regional office designated by ecology. The board may retain a copy of all of the above-mentioned documents. Any documents used in reaching a record of decision regarding a water right transfer application must not be destroyed or disposed of, except as allowed by state statute. After the board completes its business on a water right transfer application, and upon submission to ecology of all records related to the application file, ecology shall be responsible for public records requests related to that file.

(4) Any comments received by a board regarding its record of decision within thirty days after ecology's final decision must be forwarded to ecology within five business days of the board's receipt of such comments by the board. These comments must be submitted by the board to the ecology regional office.

[Statutory Authority: [Chapter 90.80 RCW](#), [99-23-101](#) (Order 98-11), § 173-153-140, filed 11/17/99, effective 12/18/99.]

AMENDATORY SECTION(Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-150 What is ecology's review process of ((the)) a board's ((conditional)) record of decision((-))? (1) Upon receipt of a record of decision and report of examination, ecology shall document and acknowledge the date of receipt of such documents in writing to the issuing board. Ecology will post on its Internet site, generally within five business days, the record of decision, documenting the vote and signature of all board commissioners who participated in the decision, and the report of examination. For boards with the capacity to send signed documents electronically, ecology will post the record of decision and the report of examination generally within three business days of receiving the electronic version. The posted document will be referenced by both the board-assigned application number and by the ecology-assigned application number.

How does ecology review the record of decision?

(2) Ecology will review ~~((conditional decisions of approvals and denials))~~ all records of decisions made by water conservancy boards. Upon receipt of a ~~((conditional))~~ record of decision made by a ~~((water conservancy))~~ board, ecology will review ~~((the conditional))~~:

(a) The record of decision for compliance with state water laws and ~~((rules, policies or guidelines. As part of this review, ecology will also consider agency and tribal comments, any protests or objections filed by parties alleging that one or more of their water rights would be impaired by the transfer, and any other comments received regarding the conditional decision by the board.~~

—(2)) regulations;

(b) The record developed by the board in processing the application; and

(c) Any other relevant information.

(3) In reviewing a board's decision, ecology may consider any letters of concern or support received within thirty days of the date ecology receives the board's record of decision.

(4) Ecology will not evaluate the internal operations of a board as it reviews a board's record of decision. Exceptions are to the extent that such review is necessary to determine whether the board's decision was in compliance with state laws and regulations concerning water right transfers, including possible cases of a conflict of interest as identified in [RCW 90.80.120](#).

What are ecology's potential review responses and how are the responses made?

(5) Ecology may affirm, reverse, or modify the ~~((conditional))~~ records of decision ~~((of the))~~ made by boards. Ecology's decision will be made in the form of a written administrative order and must be issued within forty-five days of receipt of the board's ~~((conditional))~~ record of decision by the ecology regional office, except that the forty-five-day time period may be extended an additional thirty days by ecology's director, or his or her designee, or at the request of the board or applicant in accordance with [RCW 90.80.080](#). If ecology ~~((fails to act))~~ does not act on the record of decision within the forty-five-day time period, ~~or within the extension period~~, the board's ~~((conditional))~~ record of decision becomes final. ~~((The forty-five-day time period may be extended an additional thirty days by ecology's director upon the written consent of the parties to the transfer.~~

~~—(3) If ecology modifies the conditional decision by the water conservancy board, ecology shall send a notice of modification of the conditional decision that specifies which parts of the conditional decision it was in agreement with, and which parts of the conditional decision it has modified. If ecology reverses the conditional decision by the conservancy board, ecology shall send a notice of reversal of the conditional decision with an explanation of the reversal.~~

~~—(4) Ecology will send notice of its decision to all parties on the same day. Notice of ecology's decision will be sent by mail within five working days to the water conservancy board, the applicant, any person who protested or intervened before the board, persons who requested notice of its decision, the Washington department of fish and wildlife, and any affected Indian tribe.~~

~~—(5) If ecology fails to act within the specified time after receipt of the board's conditional decision, the board's action is final. The conservancy board shall notify ecology, the applicant, and any parties that have expressed interest to the conservancy board about the application, of ecology's failure to act. If ecology concurs that the review period has lapsed, ecology will send a notice to the board that the conditional decision is final))~~ (6) Ecology may issue an order affirming a board's decision. If ecology modifies the record of decision made by a board, ecology shall issue and send to the applicant and the board an order containing its modification of the record of decision. The order shall specify which part(s) of the record of decision ecology has modified. If ecology reverses the record of decision by the board, ecology shall send the applicant and the board an order reversing the record of decision with a detailed explanation of the reasons for the reversal.

Under what conditions may ecology remand a record of decision to a board?

(7) Ecology may consider conflict of interest issues during its final review of a board's record of decision. In accordance with [chapter 90.80 RCW](#), if ecology determines that a commissioner

should have been disqualified from participating in a decision on a particular application under review, the director, or his or her designee, must remand the record of decision to the board for reconsideration and resubmission of the record of decision. Upon ecology's remand, the disqualified commissioner shall not participate in any further board review of that particular application.

(8) Ecology's decision on whether to remand a record of decision under this section may only be appealed at the same time and in the same manner as an appeal of ecology's decision to affirm, modify, or reverse the record of decision after remand.

Can a board withdraw its record of decision from ecology?

(9) If ecology has not yet formally acted on a record of decision by a board, a board may withdraw the record of decision during the period allowed for ecology's review. If a board withdraws a record of decision, ecology shall remove the record of decision from its Internet site and post a notice that the decision has been withdrawn. All of the associated documents submitted to ecology by the board with the record of decision will be returned to the board. A board may withdraw the record of decision under the following conditions:

(a) The board must follow [chapter 42.30 RCW](#), the Open Public Meetings Act, in making a decision to withdraw the record of decision; and

(b) The board must send a notice of withdrawal of a record of decision to ecology on a form provided by ecology and identified as Decision to Withdraw a Record of Decision, form number 040-107.

Who is notified of ecology's order relating to a record of decision?

(10) Ecology will send its order to all parties on the same day. The order must be sent by mail, within five business days of ecology reaching its decision, to:

(a) The board;

(b) The applicant;

(c) Any person who protested;

(d) Persons who requested notice of ecology's decision;

(e) The Washington department of fish and wildlife;

(f) Any affected Indian tribe; and

(g) Any affected agency.

What is the process should ecology fail to act on a record of decision?

(11) Except as specified in subsection (5) of this section, if ecology fails to act within the specified time after receipt of the board's record of decision, the board's record of decision becomes the final order of ecology. If a board concludes that the time allowed for ecology to issue its order has lapsed, the board shall notify ecology, the applicant, any protestors, and any

parties that have expressed interest to the board about the application that the time period has lapsed. If ecology agrees that the review period has lapsed, ecology will send an order to the board, and all entities listed in subsection (10) of this section, stating that the record of decision is final. If ecology disagrees with the board's conclusion, ecology shall work with the board to establish the beginning date of the review period based upon the date of receipt of the record of decision and report of examination by the ecology regional office.

[Statutory Authority: [Chapter 90.80 RCW](#). [99-23-101](#) (Order 98-11), § 173-153-150, filed 11/17/99, effective 12/18/99.]

AMENDATORY SECTION(Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-160 ((Perfection of a transfer approval.)) When is a board-approved water right transfer that has been affirmed by ecology complete? Who provides documentation of the transfer when it is completed?

(1) When an ~~((approved))~~ affirmed transfer has been ~~((perfected))~~ completed and the transferred water right has been put to beneficial use, the person authorized to transfer ~~((a))~~ the water right must submit satisfactory evidence to ecology showing the transfer has been completed in accordance with ~~((the))~~ ecology's order authorizing the transfer of the water right. Upon verification of the extent of development as authorized, ecology will issue a change certificate, superseding permit, or a superseding certificate to the water right holder(s) to document that the approved transfer was accomplished ~~((upon verification of the extent of development as authorized))~~. When evaluating the proposed water right transfer application, the board will consider and address in the report of examination any issues pertaining to completion of the development or the application of the water to a beneficial use of water as it is proposed to be changed.

Who receives a copy of the document identifying the perfection of the transfer approval?

(2) When ~~((the))~~ a document ~~((is issued))~~, as described in subsection (1) of this section, is issued to the applicant, ecology shall provide a copy to the ~~((conservancy))~~ appropriate board for its records, if requested by the board. The document ~~((will))~~ shall also be recorded, at the applicant's expense, by the county or counties in which the ~~((use of))~~ water is ~~((made))~~ authorized for use.

(((2))) What happens if the approved transfer is not completed within the development schedule or if the change authorization is canceled?

(3) If development of the approved transfer is not completed in accordance with the development schedule that accompanies the approval, extensions may be requested in accordance with [RCW 90.03.320](#), and will be ~~((processed under standard procedures))~~ evaluated by ecology.

~~(((3)))~~ (4) If the person authorized to transfer a water right fails to accomplish the transfer in accordance with the authorization, or any subsequent extensions granted by ecology, and does not receive an extension from ecology, or fails to comply with the requirements of the transfer authorization, ecology will cancel the transfer authorization ~~((and the water right will revert to~~

~~the original configuration, less any quantity that was relinquished for nonuse in connection with ecology's review of the conservancy board's conditional decision)).~~ Upon cancellation of the transfer authorization, ecology will evaluate the water right to make a tentative determination as to the present validity of the water right and the conditions under which the water right can legally be exercised.

[Statutory Authority: [Chapter 90.80 RCW](#). [99-23-101](#) (Order 98-11), § 173-153-160, filed 11/17/99, effective 12/18/99.]

AMENDATORY SECTION(Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-170 What are a board's reporting requirements((:))? Boards are required to submit reports to ecology on their activities at the end of October of each ~~((even-numbered))~~ year. The reports must be submitted to the water conservancy board coordinator on a form provided by ecology each year and must include information about board activities during the previous ((twenty-four)) twelve months. The reports shall contain the following information:

Water right transfer application data:

- (1) Information about applications to the board, to include ~~((the following))~~:
 - (a) The number of applications filed with the board, identified by water resources inventory area (WRIA);
 - (b) ~~((Number of applications that received a public hearing to hear intervenors;))~~ The number of records of decision withdrawn from ecology by the board;
 - (c) The number of ((conditional)) records of decision((s)) approving or partially approving an application;
 - (d) The number of ((conditional)) records of decision((s)) denying an application;
 - (e) ~~((Number of applications for transfer of surface or ground water;~~
 - ~~—(f) Number of applications to transfer a claim or certificate;~~
 - ~~—(g))~~ The number of records of decision remanded back to the board from ecology;
 - (f) The number of applications received by the board, distinguishing between requests to transfer surface water and ground water;
 - (g) The number of applications to transfer a water right documented by a claim;
 - (h) The number of applications to transfer a water right documented by a certificate;
 - (i) The number of applications proposing transfer related to trust water;
 - (j) The number of applications filed directly with the ((conservancy)) board, and the number transferred from ecology to the board; and

~~((h))~~ (k) The number of hearings held within other counties other than the county or counties which established the board, when water rights were proposed to be ~~((changed between counties.))~~ transferred from one county to another.

Operational information about the boards:

(2) Information about the operations of the board, to include ~~((the following))~~:

(a) ~~((Chairperson of the board;~~

~~—(b))~~ The chair of the board;

(b) The primary contact of the board;

(c) The board address, phone, and/or e-mail;

(d) The board commissioners' names and their terms of office;

(e) The regular meeting location, if any;

(f) The regular meeting schedule, if any;

(g) Any changes in membership of the board, including background and contact information for any new ~~((members))~~ commissioners;

~~((e))~~ (h) Current fees ~~((or))~~ and changes to ~~((previous))~~ previously set fees;

~~((d))~~ (i) Training received other than from ecology;

~~((e))~~ (j) Ownership of ~~((any properties))~~ property by the ~~((conservancy))~~ board;

~~((f))~~ (k) Water marketing activities ~~((and any related fees))~~;

~~((g))~~ (l) Number of staff ~~((that are))~~ employed by the board, and number of staff that provide volunteer service to ~~((;))~~ the board; and

~~((h))~~ (m) Any litigation in which the board is involved.

[Statutory Authority: [Chapter 90.80 RCW. 99-23-101](#) (Order 98-11), § 173-153-170, filed 11/17/99, effective 12/18/99.]

AMENDATORY SECTION(Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-180 ~~((Appeals.))~~ **What actions may be appealed under this chapter?** Any person aggrieved by ecology's decision to approve or disapprove the establishment or restructuring of a ~~((conservancy))~~ board, or by an ecology~~((s decision))~~ order to affirm, reverse ~~((or))~~ modify ~~((the determination of a conservancy board on an application for transfer of a water right)), or remand a record of decision made by a board,~~ may appeal the decision or order to the state pollution control hearings board in accordance with [chapter 43.21B RCW](#).

[Statutory Authority: [Chapter 90.80 RCW. 99-23-101](#) (Order 98-11), § 173-153-180, filed 11/17/99, effective 12/18/99.]

AMENDATORY SECTION(Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-190 Existing rights are not affected. Nothing in this chapter is intended to impair any existing water rights.

[Statutory Authority: [Chapter 90.80 RCW. 99-23-101](#) (Order 98-11), § 173-153-190, filed 11/17/99, effective 12/18/99.]

AMENDATORY SECTION(Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-200 Will ecology review ((of)) this chapter((?)) in the future to determine if changes are necessary? This chapter ((~~must~~)) may be reviewed by ecology whenever new information, changing conditions, or statutory modifications make it ((~~necessary~~)) prudent to consider revisions. In carrying out such a review ((~~of this chapter~~)), ecology shall consult with existing ((~~conservancy~~)) boards.

[Statutory Authority: [Chapter 90.80 RCW. 99-23-101](#) (Order 98-11), § 173-153-200, filed 11/17/99, effective 12/18/99.]

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APPENDIX B

Final Rule Version

AMENDATORY SECTION (Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-010 What are the purpose and authority((-)) of this chapter? The purpose of this chapter is to establish procedures the department of ecology (ecology) ~~((and))~~, water conservancy boards ~~((conservancy boards))~~, applicants, concerned agencies, and the public will follow in implementing chapter 90.80 RCW ~~((, and in implementing RCW 90.03.380, 90.03.390, and 90.44.100, which govern the granting of water right transfers))~~. Chapter 90.80 RCW authorizes establishment of water conservancy boards and vests them with certain powers relating to water right transfers. RCW 90.80.040 authorizes the department to adopt rules necessary to carry out the purposes of the statute.

AMENDATORY SECTION (Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-020 ~~((Applicability-))~~ To what does this chapter apply? These procedures apply to the establishment of water conservancy boards ~~((established))~~ in accordance with chapter 90.80 RCW ~~((+))~~ and to ~~((how applications to transfer water rights that are filed with a water conservancy board will be processed))~~:

(1) How such boards will function when processing water right transfer applications that are filed with a board or that are transferred to a board from ecology at an applicant's request;

(2) Reporting requirements of boards;

(3) How ecology will support and interact with boards; and

(4) How interested agencies and the public may participate in the board process.

AMENDATORY SECTION (Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-030 ((Definitions-)) How are terms defined in this rule? For the purposes of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

((1)) **"Alternate"** means an individual who:

(1) May serve as an alternate commissioner of a board at the request of the board or the legislative authority or authorities of the county or counties;

(2) Serves a board in a nonvoting capacity;

(3) Is not considered for the purpose of satisfying a quorum; and

(4) Cannot take the place of a commissioner on a temporary basis.

"Application" means an application made on an ecology form identified as an Application for Change/Transfer to Water Right, form number 040-1-97 for a transfer of a water right, including those transfers proposed under authority of RCW 90.03.380, 90.03.390 and 90.44.100. ~~((Application generally refers to filings made on an ecology form titled "application for change/transfer of water right," number 040-1-97, or as that form may be amended by ecology in the future.~~

~~((2) **"Conditional decision"** means the conclusion reached by an individual conservancy board regarding approval or denial of an application to transfer an existing water right.~~

~~((3)) A board may supplement the application with additional forms or requests for additional documentation. These forms and documentation become a part of the application.~~

"Board" means a water conservancy board pursuant to chapter 90.80 RCW.

"Bylaws" means the internal operating procedures, policies, or other guidance adopted by a board and designated as the board's bylaws.

"Commissioner" means an individual appointed to serve as a voting member on a water conservancy board through a written statement by the legislative authority or authorities of the county or counties.

"Consumptive use" means use of water whereby there is a diminishment of the water source.

((4)) **"Director"** means the director of the department of ecology.

"Ecology" means the department of ecology.

"Ecology regional office" means the water resources program at the ecology regional office designated to a board as the office where the board shall interact as identified within this chapter.

"Geographic area" means an area within the state of Washington in which an established board would have authority to process water right transfer applications. This area is identified by the legislative authority or authorities of the county or counties seeking to establish the water conservancy board. The area may be a single county, more than one county, a single water resource inventory area, or more than one water resource inventory area. If the identified geographic area contains all or part of more than one county, the counties involved must identify a "lead county" for certain administrative purposes.

"Lead county" means the county legislative authority with which ecology will communicate for administrative purposes in cases where a water conservancy board's geographic area includes more than one county legislative authority.

"Nonwater right holder" means, solely for the purpose of satisfying RCW 90.80.050(2) in regard to determining whether a potential water conservancy board commissioner is a "nonwater right holder," any party who:

(1) Does not meet the criteria of a water right holder as defined in this section; or

(2) Receives water solely through a water distributing entity.

"Record of decision" means the written conclusion reached by a water conservancy board regarding a transfer application, with documentation of each board commissioner's vote on the decision. The record of decision must be on a form provided by ecology and identified as a Record of Decision, form number 040-105.

"Report of examination" means the written explanation, factual findings, and analysis that support a board's record of decision. The report of examination is an integral part of the record of decision. The report of examination must be on a form provided by ecology and identified as Water Conservancy Board Report of Examination, form number 040-106.

"Source" means the water body from which water is or would be diverted or withdrawn under an existing water right which an applicant has proposed to be transferred.

~~((+5)))~~ **"Transfer"** means ~~((an alteration, in whole or in part, in the point of diversion or withdrawal, purpose of use, place of use, or change or amendment of a water right, or other limitation or circumstance of water use approved in accordance with))~~ a transfer, change, amendment, or other alteration of part or all of a water right, as authorized under RCW 90.03.380, 90.03.390 or 90.44.100.

"Trust water right" means any water right acquired by the state under chapter 90.38 or 90.42 RCW, for management in the state's trust water rights program.

"Water conservancy board coordinator" means the person designated by the director or his or her designee to coordinate statewide water conservancy board activities, communication, and training, and to advocate for consistent statewide implementation of chapter 90.80 RCW and chapter 173-153 WAC.

"Water right holder" means, solely for the purpose of satisfying RCW 90.80.020 (2)(d) and 90.80.050(2) in regard to determining whether the qualifications of petitioners to create a board and a potential water conservancy board commissioner are "water right holders," and as used within this rule, any individual who asserts that he or she has a water right and can provide appropriate documentation of a privately owned water right which is appurtenant to the land that they individually or through marital community property own or in which they have a majority interest.

AMENDATORY SECTION (Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-040 ((Creation of)) How is a water conservancy board((-)) created? ((Counties)) All eligible entities identified in this section under subsection (1)(a) of this section are encouraged to consult with ecology when considering ((formation)) creation of a water conservancy board. In accordance with chapter 90.80 RCW, boards may have either three or five commissioners and must be established to serve an identified geographic area, as defined in WAC 173-153-030. A newly established board cannot include in the geographic area in which it will serve any area that overlaps with a geographic area served by an existing board.

(1) Creation of a water conservancy board is accomplished by the following steps:

(a) A resolution or petition is proposed to or by the legislative authority or authorities of a county or counties;

(b) Public notice;

(c) Public hearing(s);

(d) Adoption of a resolution creating the board by the legislative authority or authorities of the county or counties;

(e) When a board is created by more than one county legislative authority, a lead county is designated;

(f) A petition is submitted to the director; and

(g) The director must approve the creation of a board.

Where is the resolution or petition calling for the creation of a board submitted?

(2) A resolution or petition calling for creation of a water conservancy board must be submitted to the ~~((county))~~ legislative authority ~~((calling for formation of a water conservancy board. The))~~ or authorities of the county or counties in which the board would serve.

Who can initiate a petition calling for the creation of a board?

(3) A resolution or petition may be initiated by the following entities:

~~((i))~~ (a) The ~~((county))~~ legislative authority or authorities of the county or counties which would be served by the board;

~~((ii))~~ (b) The legislative authority of an irrigation district, a public utility district that operates a public water system, a reclamation district, a city operating a public water system, or a water-sewer district that operates a public water system;

~~((iii))~~ (c) The governing body of a cooperative or mutual corporation that operates a public water system serving one hundred or more accounts;

~~((iv))~~ (d) Five or more water right~~((s))~~ holders ~~((who divert water for use in the county))~~, in the geographic area which would be served by the board, who divert or withdraw water for a beneficial use, or whose nonuse of water is due to a sufficient cause or an exemption pursuant to RCW 90.14.140; or

~~((v))~~ (e) Any combination of the above~~((s))~~.

What information must be included in the proposed resolution or petition calling for the creation of a board?

(4) The resolution or petition must include:

~~((i))~~ (a) A statement ~~((of))~~ describing the need for the board;

~~((ii))~~ (b) Proposed bylaws that will govern the operation of the board;

~~((iii))~~ ~~An~~ (c) Identification of the geographic ~~((boundaries where there is an initial interest in transacting water sales or transfers))~~ area within which the board would serve; and

~~((iv))~~ (d) A description of the proposed method(s) for funding the operation of the board~~((s))~~

~~((e))~~ A public hearing must be held by the county legislative authority on the proposed creation of the board~~((s))~~.

What notice is given to the public regarding the proposed creation of a board?

(5) A public notice must be published in a newspaper of general circulation in the county or, if the board would serve more than one county, a public notice must be published in a newspaper of general circulation in each county in which the

board would serve. The notice(s) must be published not less than ten days(~~((7 nor))~~) and not more than thirty days(~~((7))~~) before the date of a public hearing (~~((to be held by the county legislative authority))~~) on the proposed creation of the (~~((water conservancy))~~) board. The notice(s) shall describe the (~~((time, date, place and purpose of the hearing, as well as the))~~):

- (a) Time;
- (b) Date;
- (c) Place;
- (d) Purpose of the hearing; and
- (e) Purpose of the board.

Notice must be sent to the ecology(~~((1s))~~) regional office at the time of publication of the public notice, and an effort (~~((should))~~) shall be made to ensure that any watershed planning unit (~~((or))~~) and Indian tribe with an interest in water rights in the (~~((county))~~) area to be served by the board also receives the notice(~~((7))~~).

((+e)) How many public hearings must be held for the creation of a board?

(6) At least one public hearing on the proposed creation of the board must be held by the legislative authority of each county in which the board would serve.

What must be included in the adopted resolution which establishes a board?

(7) If the legislative authority or authorities of the county or counties decide to establish a board after the public hearing(s) a resolution must be adopted by the ((county)) legislative authority or authorities of the county or counties, approving the creation of ((a water conservancy)) the board(~~((7 and~~

~~((f) The county legislative authority shall identify and select county residents who wish to participate on the county's water conservancy board.~~

~~((2) Ecology will approve or deny creation of a water conservancy board within forty-five days of receiving:)). The resolution must describe or include:~~

- (a) The need for the board;
- (b) The geographic area to be served by the board;
- (c) The method or methods which will be used to fund the board;
- (d) Whether the proposed board will consist of three or five commissioners;
- (e) The designated lead county if a board is proposed which would serve in more than one county; and
- (f) A finding that the creation of the board is in the public interest.

What is included in a petition to ecology for the creation of a board?

(8) The petition submitted to ecology to create the board must include the following:

(a) A copy of ~~((a))~~ the resolution or petition to or by the ~~((county))~~ legislative authority or authorities of the county or counties calling for the ~~((formation of a water conservancy board))~~ creation of a board. If a board is proposed which would serve in more than one county, the resolution shall be provided by the lead county as designated under subsection (7)(e) of this section. If five petitioners meeting the definition of a water right~~((s))~~ holder~~((s who divert water for use in the county initiated the petition, it must include their names, addresses, and documentation as to the water rights held by the petitioners. Documentation may include the permit number, certificate number, or claim number of the petitioner's water right. The petition must include a description of how the water conservancy board will be funded;~~

~~((b))~~ An affidavit of publication for the public notice that appeared in a newspaper of general circulation in the county not less than ten days nor more than thirty days before the date of the public hearing on the proposed creation of the board;

~~((e))~~ in the county or counties which initiate the petition, the petition must also include the names and addresses of the petitioners;

(b) A summary of the public testimony presented during the public hearing~~(s)~~ conducted by the ~~((county))~~ legislative authority or authorities of the county or counties in response to the resolution or petition to ~~((form a water conservancy))~~ create a board. The summary shall ~~((include a title and a date for))~~ be clearly identified and include the date of the hearing;

~~((d))~~ (c) A copy of the resolution adopted by the ~~((county))~~ legislative authority or authorities of the county or counties approving the creation of a water conservancy board. The resolution must include ~~((a method for funding the proposed water conservancy board))~~ all elements described in subsection (7) of this section; and

~~((e))~~ (d) A copy of the board's proposed bylaws.

~~((3) Ecology))~~ **What is the process for the director to approve or deny the creation of a water conservancy board?**

(9) Upon submission to the water conservancy board coordinator of the required documentation pursuant to subsection (8) of this section, the director will determine ~~((if))~~ whether the creation of a water conservancy board will further the purposes of the law and ~~((will))~~ be in the public interest. The public interest includes, but is not limited to, whether ecology has sufficient staffing resources to provide the necessary training, monitoring, and technical assistance to the board and to make timely responses to the board's ~~((anticipated conditional))~~ records of decisions ~~((on applications))~~.

~~((4) Based on its determination, ecology will approve or deny the formation of the water conservancy board. If formation of a water conservancy board is approved, ecology will include a description of the training requirements as outlined in WAC 173-153-050 for water conservancy board members in its approval.~~

~~(5)(a) Ecology may revoke legal authority of a board to make conditional decisions in the following circumstances:~~

~~(i) If the board fails to render a conditional decision for a period of not less than two years; or~~

~~(ii) If the board demonstrates a pattern of ignoring legal principles and requirements in its processing of applications or in its conditional decisions; or~~

~~(iii) If requested by the county legislative authority that called for the board's formation.~~

~~(b) The board will be allowed thirty days to respond to any revocation before it becomes effective. Ecology may reverse the revocation based upon the board response.))~~ (10) The director's determination regarding creation of the board shall be made within forty-five days of receiving all items listed in subsection (8) of this section.

(11) If creation of a board is approved, ecology will include in its notice of approval any unique conditions or provisions under which the approval is made, if any, and a description of the initial training requirements for board commissioners as outlined in WAC 173-153-050.

NEW SECTION

WAC 173-153-042 How are water conservancy board commissioners appointed and the length of their terms determined?

How do counties notify ecology of board commissioner's appointments and terms?

(1) Upon approval of a new board by ecology, or upon approval of restructuring the number of commissioners on an existing board, the legislative authority of the county or the lead county shall submit to ecology's water conservancy board coordinator a written statement identifying the individuals appointed to the board. The statement must include:

(a) The name, mailing address, and phone number or other contact information of the commissioners;

(b) The terms of office of the commissioners; these terms of office must be staggered as described in RCW 90.80.050(1).

What happens when a board commissioner's term expires or a board position becomes vacant?

(2) Upon the expiration of a board commissioner's term, the appropriate legislative authority or authorities of the county or counties shall either:

(a) Reappoint the incumbent commissioner; or

(b) Appoint a new commissioner to the board. A written statement including the information as described in subsection (1) of this section shall be submitted to ecology's water conservancy board coordinator.

(3) In the event a board position becomes vacant, the legislative authority or authorities of the county or counties shall appoint a new commissioner in accordance with RCW 90.80.050(2). A statement as described in subsection (1) of this section must be submitted to ecology's water conservancy board coordinator. The new commissioner shall fill the vacancy only for the remainder of the unexpired term and, upon completion of the unexpired term, may be reappointed, as described in subsection (2) of this section, to serve a full six-year term.

What are the terms of board commissioners?

(4) Initial terms of commissioners appointed to a newly created board shall be staggered as described in RCW 90.80.050.

(5) Upon the expiration of the initially appointed commissioners' terms, all subsequent appointments shall be for six-year terms.

(6) The initial terms of office of board commissioners on a restructured board shall be staggered as set forth in RCW 90.80.050. As each of the commissioners' term of office expires, newly or reappointed commissioners shall all be appointed to six-year terms. However, in order to maintain staggered terms, regardless of the date on which such commissioners may be appointed or reappointed, the expiration of all commissioners' terms shall be the same day and month as the expiration of the term of office of the first commissioner appointed to the board, varying only in the year of expiration.

How would an appointed board member resign the position?

(7) A board commissioner may resign the board position by submitting a letter of resignation to the appointing county or counties. A copy of the resignation letter must be submitted to the water conservancy board coordinator by either the resigning board member or by the board.

What is the responsibility of a board in notification of board vacancies?

(8) It is the responsibility of the board to notify the appointing county(ies) and the water conservancy board coordinator that there is a board commissioner vacancy.

(9) The appointing county(ies) and the board will determine and conduct a process to fill the commissioner vacancy in accordance with subsection (3) of this section.

NEW SECTION

WAC 173-153-043 How can a board's authority be revoked or the board dissolved?

Revocation:

(1)(a) Ecology may revoke legal authority of a board to make any decisions regarding water right transfers for reasons which include, but are not limited to, the following:

(i) If the board fails to issue a record of decision for a period of two years or more from the date the board was approved or from the date that the last record of decision was issued; or

(ii) If the board demonstrates a pattern of ignoring statutory and regulatory requirements in its processing of applications or in its records of decision; or

(iii) If requested by the legislative authority or authorities of the county or counties that called for the board's formation.

(b) The board will be allowed thirty days to respond to any revocation before it becomes effective. Ecology may reverse the revocation based upon the board response.

Dissolution:

(2)(a) The legislative authority of a county or lead county may adopt a resolution to dissolve a board.

(b) Ecology may petition the legislative authority of the county or lead county, with a copy to the board, for dissolution of a board.

(c) Upon resolution by the legislative authority of the county or lead county to approve the dissolution of a board, the board will be allowed thirty days after the date of the resolution to respond to the petition for dissolution.

(d) The resolution by a county or lead county to approve the dissolution of a board will become effective thirty days after adoption of the resolution.

(e) The legislative authority of the county or lead county may reverse the dissolution based upon the board's response.

NEW SECTION

WAC 173-153-045 What is the process for restructuring a board? (1) A board may be restructured as to the number of commissioners on the board and the geographic area of its jurisdiction.

(2) A board, a county legislative authority, or a lead county legislative authority may request to restructure an existing board within its geographical jurisdiction. It is suggested that the legislative authority or authorities of the county or counties and the existing board communicate and work cooperatively during the board restructuring process.

(3) The legislative authority or authorities of the pertinent county or counties shall hold a public hearing and adopt a resolution including:

(a) The manner of restructuring and the need for restructuring the board;

(b) The number of commissioners to serve on the board;

(c) The proposed geographic area of jurisdiction of the board;

(d) If the proposed geographic area of jurisdiction is restructured to include more than one county legislative authority, the legislative authorities of each county included within the restructuring shall identify a lead county; and

(e) A summary of the public testimony presented during the public hearing(s) conducted by the legislative authority or authorities of the county or counties in response to the resolution to restructure a board. The summary shall be clearly identified and include the date of the hearing.

(4) Upon submission to the water conservancy board coordinator of the required documentation pursuant to subsection (3) of this section, the director will determine whether the restructuring of a board will further the purposes of the law and be in the public interest as described in WAC 173-153-040(10).

(5) The director's determination to approve or deny restructuring of the board shall be made within forty-five days of receiving all items listed in subsection (3) of this section.

(6) If the board restructuring is approved, ecology will include in its notice of approval any unique conditions or provisions under which the approval is made, if any, and shall identify the date the restructuring of the board will take effect. The director shall also identify any additional

training required of the board if it assumes jurisdiction of a new geographic area.

AMENDATORY SECTION (Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-050 What are the training requirements((-)) for board commissioners?

What training is required for newly appointed board commissioners?

(1) ~~((Before participating in any conditional decision of a water conservancy board, every member is required to complete a training program provided by ecology.))~~ Every commissioner of a board shall complete a training program provided by ecology before participating in any decision concerning a water right transfer application being considered by the board. Attendance at training for new commissioners shall be limited to board commissioners, their administrative staff, board alternates, and individuals providing training. Due to the complexity of the training and the need to provide adequate time to focus on questions from board commissioners, the number of participants attending each training session shall be left to the discretion of the water conservancy board coordinator. Training for new commissioners shall be held at least once in the spring and once in the fall depending on, but not limited to:

(a) Whether ecology has sufficient staffing resources to provide the necessary training; and/or

(b) Whether there are sufficient numbers of board commissioners needing training.

(2) Successful completion of the training program will consist of:

(a) ~~((Completing))~~ Receiving at least thirty-two hours of instruction, from or sponsored by ecology, regarding hydrology, state water law, state water policy, administrative and judicial case law developments, field practices, evaluation of existing water rights, and ~~((applied))~~ practical experience working with ecology staff on applications for ~~((transfer of))~~ water right~~((s with ecology staff))~~ transfers; and

(b) Demonstrating an understanding of course materials during training, and demonstrating sufficient mastery of the training curriculum ~~((by passing))~~ through an examination ~~((given))~~ administered by an ecology employee upon completion of ~~((the minimum))~~ training.

~~((2) Ecology will certify in writing to the appropriate county legislative authority the successful completion of the~~

~~training program for water conservancy board members and staff.))~~

(3) If a board is restructured to modify the geographic area, the director may require additional training of all board commissioners;

(4) Upon a water conservancy board commissioner's or alternate's successful completion of the training, ecology will certify such completion in writing to the county or lead county of the geographic area served by the board. A copy of this letter shall also be sent to the board.

Are there continuing education requirements for board commissioners?

(5) After completing one year of service on a water conservancy board, ~~((members must each year complete))~~ each following year prior to the anniversary of their appointment to the board, commissioners must complete an additional eight hours of continuing education ~~((directed))~~ provided or approved by ecology. Each commissioner shall complete the minimum continuing education requirement before participating in any decision concerning a water right transfer application being considered by a board. Continuing education may include, but is not limited to, readings, a seminar or conference, or field experience ~~((on))~~ regarding, but not necessarily limited to, subjects such as state water law, state water policy, administrative and judicial case law developments, field practices, ~~((the))~~ evaluation of existing water rights, ~~((or))~~ and hydrology.

(6) Ecology may, at its discretion, and in response to ~~((demand))~~ requests, provide training ~~((semiannually))~~ periodically. Ecology may also combine training for more than one board.

How can a board commissioner receive credit for continuing education not provided or sponsored by ecology?

(7) Continuing education training requirements under subsection (5) of this section may be fulfilled through training not provided or sponsored by ecology. However, such training will be accepted only if it is reported to ecology on a form provided by ecology and identified as the Water Conservancy Board Training Credit Request Form, form number 040-104, and approved by ecology as appropriate training.

(8) Board commissioners are encouraged to report to the water conservancy board coordinator all relevant continuing education received.

AMENDATORY SECTION (Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-060 What is the scope of authority of a water conservancy board((s-))? (1) A board has authority to:

(a) Evaluate water right transfer applications and issue records of decision and reports of examination for water right transfers;

(b) Act upon the transfer of water rights to the state trust water right program, when doing so is associated with an application to transfer a water right. Boards are encouraged to immediately contact ecology for technical assistance when acting on changes involving trust water rights;

(c) Establish and maintain a water right transfer information exchange program regarding the sale and lease of water rights; and

(d) Perform other activities as may be authorized under chapter 90.80 RCW, subject to other applicable state laws and regulations.

How does a board process a water right change application?

(2) A ((water conservancy)) board may accept for processing an application ((for)) to transfer ((of)) a surface or ground water right ((for processing)) if the water right is currently diverted, withdrawn, or used within((t)) or, if approved, ((will)) would be diverted, withdrawn, or used within the boundaries of the ((county)) geographic area in which the board has jurisdiction, exceptions to this are stated in subsection (7) of this section. The application may be for a permanent or ((seasonal-))temporary((t)) use.

(a) The board should promptly request from the department a copy of the water right file related to the water right transfer application filed with the board. The department will comply with the request at no charge to the board.

(b) The board shall investigate the application and ((make a determination)) determine whether the proposal should be approved or denied and, if approved, under what conditions, if any, the approval should be granted. ((In this process))

(c) As part of the process described in subsection (2)(b) of this section, boards should determine whether a watershed planning unit is involved in planning related to the source of water that would be affected by the application ((and,)) being considered. If so, the board should notify the planning unit of the application, and consider comments from the watershed

planning unit prior to issuing its ~~((conditional))~~ record of decision.

~~((2)) (a) Applications for transfers that propose to use water from the same source must generally be processed in the order in which they were filed. Exceptions are outlined in chapter 173-152 WAC.~~

~~((b)) (3) Decisions on applications must be made by a board in the order in which the applications were originally ((filed with)) accepted by the board ((or with ecology, if the applications were first filed with ecology)). Exceptions are ((as)) outlined in ~~((WAC 173-152-050 or as follows:~~~~

~~((i) Applications to alleviate public health and safety emergencies, as specified in WAC 173-152-050(1), may be processed before competing applications; and~~

~~((ii) If review of an application has begun and the board determines that gathering more information than is available at the time of the review is required, the board need not await the availability of the additional information before reviewing the next application awaiting action.~~

~~((c) A conservancy)) RCW 90.03.380 and chapter 173-152 WAC.~~

(4) Boards must take into consideration the effect of a proposed transfer on the availability of water for ((any applications for new water rights, as well as)), or possible impairment of, previously filed transfer applications for water from the same source regardless of the order in which applications are processed. This includes any applications for transfers ((that were previously)) filed with ecology ((for water from the same source as the application under consideration by the)) or any other water conservancy board. Ecology will cooperate with ~~((conservancy))~~ boards to resolve any problems associated with conflicting applications. ~~((The availability of water for senior applicants, including those applicants who have filed transfer applications with ecology rather than a conservancy board, must not be impaired, regardless of the order in which applications are processed.~~

~~((3) The)) (5) Neither the annual quantity nor the instantaneous quantity of water ((appropriated under)) tentatively determined by the board to be associated with a water right may ((not)) be ((expanded)) increased. ~~((For agricultural use,))~~ Uses may not be added and the acreage irrigated may not be expanded, except in ((limited)) the circumstances allowed in RCW 90.03.380, in which the annual consumptive use under the water right is not increased.~~

~~((4)) (6) As described in RCW 90.66.065, under a family farm permit, surplus waters made available through water-use efficiency may, subject to laws including WAC 173-152-110, be transferred to any purpose of use that is a beneficial use of water.~~

(7) Any water right or portion of a water right that has not previously been put to actual beneficial use cannot be transferred, except as authorized by RCW 90.44.100((. Transfer of previously unused ground water rights under RCW 90.44.100 is limited to changing the place of use and the point of withdrawal.

(5) No applicant may be compelled to apply for a transfer with a conservancy board. Applicants have the option of applying directly to ecology rather than a water conservancy board)), or RCW 90.03.395 and 90.03.397.

Where can an applicant file a water right change application?

(8) If a board has been established in an area where an applicant wishes to apply for a water right transfer, applicants have the option of applying either directly to ecology or to a board.

What happens if two boards have overlapping jurisdictions?

(9) Overlapping jurisdiction occurs because boards may transfer rights into and out of their geographic area. Water conservancy boards may negotiate inter-board agreements to determine which board will act in instances of overlapping jurisdiction. Boards are advised to research applicable law, including chapter 39.34 RCW, the Interlocal Cooperation Act, prior to entering into any agreement. Any such agreement must be filed with the water conservancy board coordinator within fifteen days of its effective date.

(10) In circumstances in which more than one board may have authority to process water right transfers in a particular area, but the boards have not negotiated an inter-board agreement as specified in subsection (9) of this section, an applicant may file an application with either board. For example, if one board has authority to transfer the applicant's water right out of its jurisdiction, while another board has authority to transfer the water right into its jurisdiction, the applicant can apply to either board.

AMENDATORY SECTION (Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-070 What does an applicant need to know about filing an application for transfer of a water right((-))?

How are applications accepted for processing by a board?

(1) ((Water conservancy boards may accept applications for transfer of water rights.)) Ecology will provide water right transfer application forms and applicant instructions to ((water

~~conservancy))~~ boards, which will make them available to ~~((prospective applicants))~~ the public upon request. All applications to ~~((the water conservancy))~~ a board must be made using the water right application for change/transfer form supplied by ecology, form number 040-1-97.

(2) Boards and ecology shall inform all applicants that the decision to file a transfer application with a ~~((conservancy))~~ board rather than directly with ecology is solely at the discretion of the applicant.~~((The conservancy board and ecology will inform any prospective applicants that they have the option of filing either with the board or with ecology.~~

(2) The)), provided a board is active in the area addressed by the transfer application.

(3) A water right transfer application is considered filed when it is received by a board commissioner, or a designated administrative support person for a board at the location designated by the board.

(4) A separate application must be filed for each water right that is proposed to be transferred.

(5) A majority vote of a quorum of a board is required to accept a complete application for processing.

What must a complete application include?

(6) Boards shall ~~((ensure))~~ require that ~~((the))~~ applications ~~((is))~~ submitted directly to them are complete and legible ~~((and is accompanied by the minimum ten-dollar examination fee required by RCW 90.03.470(1)). The board may establish and charge additional fees in accordance with RCW 90.80.060(2)).~~

(3) The original application form)). A complete application shall:

(a) Include the minimum ten-dollar examination fee required by RCW 90.03.470(1).

(b) Contain the information requested on the application form as applicable.

(c) Be accompanied by such maps and drawings, in duplicate, and such other data or fees, as may be required by the board. Such accompanying data shall be considered as part of the application as described in RCW 90.03.260.

(7) A board may request that an applicant provide additional information as part of the application by requiring, for example, that the applicant complete additional forms supplemental to the standard application or that applicant prepare and/or provide specific reports regarding aspects of the application.

How is an application number assigned to a water right transfer application filed with a board?

(8) The board shall assign a unique number to a water right transfer application upon acceptance of the application by the board.

(9) The number assigned by the board to the water right transfer application shall be written in ink within the space provided on the application for the application number.

(10) The water right transfer application, public notice, record of decision, and report of examination produced by the board in processing the application shall reference the board-assigned number.

(11) The unique application number is assigned in accordance with the following three-part format:

(a) The first part of the board-assigned application number will identify the board that has accepted the application as follows:

(i) Boards having jurisdiction within a geographic area that is based upon a county boundary or the boundary of multiple counties will begin all application numbers with the first four letters of the name of the county or of the lead county. For example, a board with jurisdiction within Kittitas County will begin each application number with the letters "KITT."

(ii) Boards that have jurisdiction within a geographic area that is based upon a water resource inventory area (WRIA) or multiple WRIAs will use the number of the WRIA of jurisdiction or, in the case of multi-WRIA boards, the WRIA of jurisdiction associated with the water right.

(b) The second part of the board-assigned application number will be the last two digits of the year in which the application was accepted. For example, applications that are accepted during the year 2003 will use the digits "03."

(c) The third part of the board-assigned application number will be a sequential two-digit number beginning with the number "01" for the first application accepted after the effective date of this rule and beginning with number "01" for the first application accepted by the board during each subsequent calendar year.

(d) A dash (-) will be used to separate the three parts of the application number as provided within (a), (b), and (c) of this subsection. For instance, the first application accepted by the Kittitas County water conservancy board during the year 2003 will be assigned number KITT-03-01.

Are applications before a board considered dual-filed with ecology?

(12) The board must forward the complete original application form upon which the board has legibly written the board-assigned application number in the space provided for that purpose and the statutory state application fee (~~((must be forwarded by the conservancy board))~~) to the (~~((appropriate))~~) ecology regional office within five (~~((working))~~) business days of the date (~~((of receipt))~~) the board accepts the application for processing.

(13) Within thirty (~~((working))~~) business days from the date (~~((of notice))~~) ecology receives the application from the board, ecology will assign a state water right (~~((control))~~) change application number to the application and inform the (~~((water conservancy))~~) board of the assigned number. The number assigned by ecology will be used for ecology's internal administrative purposes, including the recording of the application within the state water right record. The ecology-assigned number need not be used by the board in processing the application, including within the public notice.

(14) Ecology will open and maintain a file (~~((relating to))~~) regarding the application (~~((that will be maintained))~~) for permanent recordkeeping. Ecology will inform the applicant if additional state fees are due. The board may not continue processing the application if notified by ecology that statutorily required application fees are due. Within three days of receipt of such fees, ecology shall inform the board of satisfaction of fee payment regarding any application in which ecology notified the board of outstanding fees.

(15) Upon acceptance of the application by ecology, the application is considered to be filed with both the board and ecology. However, ecology shall not act on the application unless it is notified by the board that the board has declined to process the application and upon receiving a written request from the applicant that ecology process the application.

How can responsibility for processing an application previously filed with ecology be transferred to a board?

(~~((+4))~~) (16) If an applicant makes a request to a (~~((water conservancy))~~) board that an application previously filed with ecology be (~~((reviewed))~~) considered for processing by that (~~((conservancy))~~) board, the (~~((conservancy))~~) board (~~((must determine whether it will review the application. If the conservancy board determines that it will review that application, the board shall make a))~~) may request (~~((to))~~) that ecology(~~((, and ecology shall))~~) forward a copy of the application (~~((and all relevant documents))~~) file to the (~~((conservancy))~~) board. Ecology will comply with the request and the original application will continue to be on file and maintained at ecology but will not be considered as part of ecology's active workload while the application is being processed by the board.

(17) The board shall notify ecology if it accepts the application for processing. The board will assign an application number in accordance with subsection (10) of this section and inform the ecology regional office in writing of the board's application number within five business days of accepting the application.

Can a board decide not to accept an application for processing, or decide to discontinue processing an application?

~~((5))~~ (18) By a majority vote of a quorum of a board, a board may decline to process or ~~((continue))~~ may discontinue processing an application at any time. The board ~~((will))~~ must inform the applicant of its decision in writing ~~((of its decision to decline further consideration of the application))~~ within fourteen ~~((working))~~ business days of making the decision. The board must ~~((forward to ecology the working file for the specific transfer and any state application fees that have not previously been forwarded to ecology. The board must also provide a)),~~ at the same time, send the ecology regional office a copy of the board's written notice to the applicant. If the basis of the board's decision to decline processing the application is not sufficiently clear from the written notice, and the applicant filed a written request that ecology process the application, ecology may request a further written explanation ~~((to ecology))~~ regarding ~~((its))~~ the board's decision not to process or finish processing the application. The board must provide this additional written explanation within thirty days of ecology's request.

(19) If a board declines to process or discontinues processing an application, it must return the application to the applicant and must inform the applicant that the application may be filed with ecology and advise the applicant of the appropriate ecology office where the application should be filed.

Who must receive copies of applications being processed by a board?

~~((6) The))~~ (20) Boards must ensure that copies of ~~((the))~~ application accepted by them for processing are ~~((properly distributed))~~ provided to interested parties in compliance with existing laws ~~((, ecology memoranda of understanding, policies and other guidance))~~. To assist the boards in this, ecology will provide a list of ~~((potentially interested))~~ parties which have identified themselves to ecology as interested in the geographic area of the board. Additional interested parties, including Indian tribes, may request copies of applications from boards.

(21) A notice of each application accepted by a board shall be provided to any Indian tribe that has reservation lands or trust lands contiguous with or encompassed within the geographic area of the board's jurisdiction.

AMENDATORY SECTION (Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-080 What public notice(~~(-)~~) is given on a water right transfer application before a board? (1) Upon acceptance by a board of a water right transfer application in accordance with WAC 173-153-070(2), the (~~(water conservancy)~~) board shall publish(~~(, or require the applicant to publish,~~) a public notice of the proposed water right transfer (~~(of a water right)~~) in accordance with RCW 90.03.280(~~(-)~~). This notice must be published at least once a week for two consecutive weeks in the legal notice section of a newspaper of general circulation in (~~(at a minimum)~~) the project area of the county or counties (~~(of proposed water use, diversion and storage of)~~) where the application proposes to use, divert, withdraw and/or store water. Ecology must provide the board with a list of newspapers generally acceptable for (~~(this purpose)~~) the publication of public notices. The board should consider publishing an additional public notice (~~(may be required)~~) in other areas that (~~(may)~~) could be affected by the transfer proposal. The public notice of each individual application for transfer must include the following information, in the following order:

- (a) The applicant's name and city or county of residence;
- (b) (~~(Application number assigned by ecology,)~~) The board's assigned water right change application number;
- (c) The water right priority date;
- (d) A description of the water right to be transferred, including (~~(any identifying)~~) the number of any water right document, that embodies the water right such as a permit, certificate or claim filed under chapter 90.14 RCW, the location of the point of diversion or withdrawal(~~(-)~~); the place of use(~~(, and)~~); the purpose(s) of use; the period of use; if for irrigation purposes, the total acres irrigated; and the instantaneous rate and annual quantities (~~(authorized)~~) as stated on the water right document;
- (e) A description of the proposed transfer(s) to be made, including, when applicable, the proposed location of point(s) of diversion or withdrawal(~~(, place of use, or instantaneous and annual quantities authorized)~~); the proposed place(s) of use; the proposed purpose(s) of use; if for irrigation purposes, the total number of acres to be irrigated; and the instantaneous rate and annual quantities of water associated with the proposed water right transfer including the description of a transfer that includes only a portion of a water right;

(f) The manner and time limit for filing protests with ecology under RCW 90.03.470 and WAC 508-12-170; and

(g) ~~((Manner and time limit for intervening before the board under RCW 90.80.070(4).))~~ The manner for providing written and oral comments or other information to the board, including the board's mailing address and the place, date, and time of any public meeting or hearing scheduled to consider, discuss, or decide the application.

(2) The board may require the applicant to review and confirm the information in the public notice prior to publication. If the board does so, the applicant assumes responsibility for any errors contained in the description of the application published in the public notice.

(3) The board must send a copy of the public notice ((will be sent)) to the ecology((-s)) regional office at the same time the public notice is submitted for publication.

~~((+2))~~ (4) Before acting on an application, the board must first receive a notarized affidavit of publication from each newspaper in which the public notice regarding the application was published ((verifying)), and the board must verify that publication ((correctly)) occurred correctly. The board must also allow at least thirty days ((for the filing of protests or objections following the last date of publication of the notice before making a final)) following the last date of publication of the notice, to allow for protests or objections to be filed with ecology before the board issues a record of decision.

~~((+3))~~ (5) The public notice must be republished in all newspapers of original publication when an applicant substantively amends ((the)) an application for a transfer of a water right subsequent to publication of the notice, or when a substantive error or omission occurs in the publication((, the public notice must be republished in all newspapers of original publication, and reviewing agencies must be sent corrected copies of any amended transfer proposal)). All parties who were sent the original application and/or public notice as required by WAC 173-153-070(20) must be sent corrected copies of any amended transfer application, if necessary to keep ecology and all interested parties accurately informed. For the purposes of this subsection, the term "substantive error in publication" refers to, but is not limited to, any item identified in subsection (1) of this section that is omitted from or inadequately characterized in the public notice.

AMENDATORY SECTION (Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-090 How can protests((-)) and letters of concern or support on a water right transfer application be submitted to a board?

Where is a protest submitted regarding a water right transfer application before a board?

(1) A protest (~~((of an application that has been filed with a water conservancy board))~~) against granting a proposed water right change or transfer, as identified in RCW 90.03.470(12), must be received by ecology, with the statutory two-dollar protest fee, within thirty days of the last date of publication of the public notice.

(2) Ecology shall provide a copy of the protest to the appropriate board within five days of receipt of the protest.

(3) In accordance with WAC 508-12-170 and 508-12-220, a board will thoroughly investigate all pertinent protests of a transfer application before the board.

(4) Ecology (~~((will))~~) shall consider all pertinent protests during its review of the board's (~~((conditional))~~) record of decision on the application.

(5) Persons inquiring of the board or ecology regarding protest procedures (~~((will))~~) shall be directed to file the protest with ecology. (~~((Ecology will provide a copy of the protest to the appropriate board.~~

~~((2)))~~ (6) A board must immediately forward to ecology any protests it receives including the two-dollar protest fee.

What is included in a valid protest?

(7) A (~~((valid))~~) protest must include:

(a) The name, address and phone number (if any) of the protesting party;

(b) Clear identification of the transfer (~~((proposal))~~) application being protested; and

(c) A statement (~~((regarding))~~) identifying the basis for the protest. (~~((Proper basis for a protest must include:~~

~~((a) The impacts of the proposed transfer on other water rights; or~~

~~((b) The impacts of the proposed transfer on the public interest; or~~

~~((c) A challenge to the potential extent and validity of the water right proposed to be transferred.~~

~~(3) The board must immediately forward to ecology any protests that it receives in error, accompanied by the two-dollar protest fee if it was included with the protest.~~

~~(4)) (d) The statutory two-dollar protest fee.~~

What is the difference between a protest and a letter of concern or support?

(8) Any protest received more than thirty days after the last date of publication of the public notice, or without the required fee, will be filed as a letter of concern.

(9) A letter of support is any comment addressing the benefit of the project proposed in an application.

(10) A party who provides a letter of concern or support regarding an application to a water conservancy board is not considered to be a protesting party unless the party has also filed a valid protest with ecology in compliance with this section.

Will a protest or letter of concern be considered?

(11) Boards must accept and consider any oral or written comments or protests in evaluating an application, in accordance with chapter 90.80 RCW, this chapter, and board bylaws.

NEW SECTION

WAC 173-153-100 How does a water conservancy board operate?

(1) Water conservancy board meetings must be in compliance with the Open Public Meetings Act, chapter 42.30 RCW. Additionally, minutes of the meetings must be recorded pursuant to chapter 42.32 RCW and such minutes must be made available for public review upon request.

(2) At the beginning of any meeting or hearing in which any application to change or transfer a water right is to be discussed, or upon which a decision is to be made, those individuals in attendance must be informed that any known allegations of conflict of interest must be expressed in that meeting or hearing or their right to do so may be forfeited in accordance with RCW 90.80.120 (2) (a).

(3) A board may adopt and amend its own bylaws through which board meetings, operations, and processes are governed.

How can a board be contacted by the public?

(4) Each board must designate at least one primary contact person for communicating with ecology and other entities. The board must inform the water conservancy board coordinator of:

(a) The name of the primary contact;

(b) How to contact that person; and

(c) Any changes to the contact information for the primary contact of the board.

(5) Boards are subject to the Public Records Act, chapter 42.17 RCW and as described in RCW 90.80.135.

AMENDATORY SECTION (Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-110 ((Examination of application.)) What is involved in the examination of an application before a board?

(1) ((A water conservancy board shall make its conditional decision on a transfer application based on applicable state law, rules, policies, and ecology guidance. In addition to specific water law, other relevant state laws, including the Growth Management Act, must be considered.)) Boards shall base their records of decision and reports of examination regarding a transfer application on applicable state laws and regulations. In addition to specific water law, boards must also consult and consider other relevant state laws, including, but not limited to, the Growth Management Act (chapter 36.70A RCW).

(2) Generally, a board should conduct a field examination of the site(s) ((of the proposal,)) identified in the transfer application, and clarify any unclear information by contacting ((the applicant, and discuss the concerns of protesters and objectors with the persons who filed them)) and discussing the information with the applicant or other appropriate persons.

(3) All relevant information must be ((collected)) identified, discussed, and considered in the board's examination. This may include the need for a board to collect pertinent detailed hydrological or hydrogeological information ((may need to be collected or other research conducted or compiled)) regarding the site(s) involved in the proposal. Any person providing an engineering, hydrologic, geologic and/or hydrogeological analysis on behalf of an applicant with an application before a board must be licensed in accordance with chapter 18.43 or 18.220 RCW, as applicable. The analysis must be certified by the individual's professional stamp.

(4) A board may require ((the)) an applicant to provide additional information at the applicant's expense, if that information is necessary to render an adequately informed ((conditional)) record of decision on ((the)) an application.

((+3) A) How are comments and protests considered during the examination of the water right transfer application?

(5) Boards may also request that commenters or protestors provide additional information regarding their comments if such

information is necessary to render an adequately informed record of decision on an application. Boards may also discuss the concerns raised in comments and protests with the persons who filed them.

(6) Boards must consider all comments and protests received about ((the)) a pending application((. In this process, boards should)), whether or not additional information is provided by the protestor or commenter.

(7) Ecology, as is the case with any public agency, may provide formal written or oral comments regarding the application under discussion at a public meeting of the board. However, if ecology does provide formal comments in the context of a public meeting, the comments shall not be taken as giving either technical assistance or direction to the board, any more than any other comments would be so considered.

What other entities should be consulted when a board examines an application?

(8) When public interest applies to the application evaluation or when there may be existing rights that could be impaired, boards shall determine whether an Indian tribe, watershed planning unit, or other governmental body is directly involved in planning or water management related to the source of water that would be affected by the application. If this is found to be the case, the board should ((engage)) consult the tribe, watershed planning unit, or other governmental body in the board's effort to obtain information concerning the application.

What other information must a board consider in its examination of the application?

(9) Boards must evaluate ((the)) an application, including ((the entire water rights record)) all information obtained by the board that is associated with the application, and determine whether or not the transfer as proposed is in accordance with applicable state laws((, rules, policies and guidelines of ecology)) and regulations. The board must also make a tentative determination as to the extent and validity of the water right proposed to be transferred, as well as whether the transfer can be made without injury or detriment to existing rights((, and)). The board must evaluate a transfer proposal pursuant to RCW 90.44.100 as to whether the proposed transfer is ((not)) detrimental to the public interest. Public interest shall not be considered when deciding whether to grant an application for change pursuant to RCW 90.03.380 exclusively.

((4) A water conservancy) (10) Boards shall ensure that the requirements of the State Environmental Policy Act (SEPA), chapter 43.21C RCW, and the SEPA rules, chapter 197-11 WAC, have been met before finalizing a ((conditional decision, and if determined by the board to be)) record of decision. If a board concludes it is appropriate under WAC 197-11-922 through 197-11-

944, the board ~~((will))~~ may be the lead agency for SEPA compliance.

~~((6))~~ (11) A ~~((water conservancy))~~ board shall consult with ecology if it encounters new, unusual, or controversial issues in the course of examining an application. Ecology will provide assistance ~~((and advice))~~ as to how to proceed in accordance with existing state laws, rules, ((policy and sound)) and current ecology policies and administrative practices.

~~((7) If a geographical area within the jurisdiction of a conservancy board is or becomes the subject of an adjudication conducted by a superior court for the determination of water rights,))~~ (12) When a board receives an application to transfer a water right that is located in an area subject to an ongoing general water rights adjudication process, the board shall consult with ecology prior to taking any action on the application. Ecology will seek guidance from the pertinent superior court regarding the court's role in administering the water rights that are subject to the adjudication. ((Thereafter,)) Ecology shall then advise the ((conservancy)) board on whether and how the board may ((proceed to evaluate and make conditional decisions on applications for transfers of water rights that are subject to the adjudication being conducted by the superior court. When a board receives an application for transfer of a water right that is in an area subject to an ongoing general water rights adjudication process, and a public notice has been published, the board must send a copy of the public notice regarding the application to ecology, which will then submit the notice to the court conducting the adjudication. When a board makes a conditional decision on a transfer of a water right that is in an area subject to an ongoing general water rights adjudication process, a copy of the conditional decision must be sent to ecology, which will forward the conditional decision to the court conducting the adjudication)) process applications.

AMENDATORY SECTION (Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-120 ((Interventions and protests.)) What assistance is available to water conservancy boards? (1) ~~((Any water right holder claiming detriment or injury to an existing water right may intervene in the application review process before the water conservancy board. Actions by the water conservancy board are independent from those of ecology. Ecology's final decisions based upon water conservancy board's conditional decisions are subject to administrative and judicial review.~~

~~((2) A party who intervenes in a water conservancy board conditional decision is not considered to be a protesting party unless the party has also filed a timely protest with ecology. Protests must be filed with ecology in accordance with WAC 508-12-120 and will be evaluated by ecology concurrently with its review of the water conservancy board conditional decision. Ecology will also consider other objections and comments in the record, including the record of any hearings held by the board, when it makes its review of the board's conditional decision.))~~
The director, or his or her designee, shall assign a representative of ecology to be available to provide technical assistance to each board as provided in RCW 90.80.055 (1)(d).

(2) Upon request by a board, an ecology representative will provide technical assistance as the board:

- (a) Reviews applications for formal acceptance;
- (b) Prepares draft records of decision and reports of examination;
- (c) Considers technical factors; and
- (d) Considers legal factors affecting the board's development of a record of decision.

(3) A board may request and accept additional technical assistance from ecology.

(4) A board may also request and accept assistance and support from the government or governments of the county or counties in which it operates, as well as from other interested parties.

(5) Ecology recognizes that boards are independent entities with the legal right to make records of decision on water right transfer applications without seeking assistance from ecology. However, should a board desire assistance from ecology in processing an application or regarding its administrative functions, ecology will provide technical assistance upon

request of the board. This technical assistance may address issues involved in application processing, including procedural requirements and administrative functions, and can include specific information regarding approaches to resolving particular issues. However, in deference to the independent status of boards, such technical assistance shall be solely in the form of guidance and shall not dictate or otherwise direct any board to reach a specific conclusion regarding any aspect of application processing or of a board's administrative functions.

(6) Technical assistance and training provided to a board is not subject to the Open Public Meetings Act.

AMENDATORY SECTION (Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-130 ((Conditional decision by water conservancy board.)) How are records of decision and reports of examination made by a water conservancy board? (1) ~~((The water conservancy))~~ Records of decision and reports of examination are adopted by a majority vote of a board, pursuant to RCW 90.80.070(4). A board's ((conditional)) record of decision and report of examination must be in writing, and ((its)) the record of decision and report of examination become((s)) part of the public record.

~~((For applications that are proposed to be denied, the water conservancy board will issue))~~ When a board proposes to deny an application, in whole or in part, the board must issue to both the applicant and ecology a record of decision and report of examination denying the transfer, or a portion of the transfer, subject to review and final determination by ecology.

~~((For applications for transfer that are proposed to be affirmed, the water conservancy board will issue the applicant))~~ When a board proposes to approve an application, the board must issue to both the applicant and ecology a record of decision and a ((certificate of conditional approval)) report of examination approving the transfer, subject to review and final approval by ecology.

What is included in a record of decision?

~~((along with either the certificate of conditional approval or the notice of denial will each address the following))~~ (4) The record of decision must be prepared on a form provided by ecology and identified as the Record of Decision, form number 040-105, and must include the conclusion of the board as to whether the application is denied or approved and a record of

the individual vote or abstention of each participating commissioner or that a commissioner has recused him or herself.

What is included in a report of examination?

(5) It is the responsibility of the water conservancy board to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination.

(6) The report of examination will consist of a form provided by ecology and identified as Water Conservancy Board Report of Examination, form number 040-106, documenting and summarizing the basic facts associated with the decision. This shall include:

(a) Within a section entitled "background":

(i) A description of the water right proposed for transfer ~~((to include the ecology assigned))~~, including the board-assigned water right change application number, and the board's tentative determination as to the validity and quantification of the right, ~~((together with a description of))~~ as well as the historical water use information that was considered by the board;

~~(ii) ((A description of any protests, objections or comments, including comments provided by other agencies, Indian tribes, or other interested parties, and the board's analysis of each issue considered, including the name and address of individual intervenors;~~

~~(iii) A discussion explaining compliance)) An explanation of how the board complied with the State Environmental Policy Act; and~~

~~((b))) (iii) A description of any previous change decisions associated with the water right.~~

(b) Within a section entitled "comments and protests": A description of any protests, and written or oral comments, including:

(i) The names and addresses of the protestors or commenters;

(ii) A description of the issues raised; and

(iii) The board's analysis regarding each issue raised.

(c) Within a section entitled "investigation":

(i) A description of the project proposed by the applicant, including any issues related to development, such as the applicant's proposed development schedule and an analysis of the effect of the proposed transfer on other water rights, pending applications for changes or transfers, and instream flows established under state law;

(ii) A narrative description of any other water rights or other water uses associated with both the current and proposed

place of use and an explanation of how those other rights or uses will be exercised in ~~((harmony))~~ conjunction with the right proposed to be transferred;

(iii) If the proposed transfer is authorized under RCW 90.44.100, an analysis of ~~((the effect of))~~ the transfer ~~((on))~~ as to whether it is detrimental to the public interest, including impacts on any watershed planning activity. Public interest shall not be considered if the proposed transfer is authorized pursuant to RCW 90.03.380 exclusively;

(iv) Any ~~((conditional decision or conclusion))~~ information indicating that an existing water right or portion of a water right has been relinquished or abandoned due to nonuse and the basis for the determination;

(v) A description of the results of any geologic, hydrogeologic, or other scientific investigations that were considered by the board and how this information contributed to the board's conclusions;

~~((+e))~~ (d) Within a section entitled "conclusions": A list of conclusions that the board drew from the information ~~((related to))~~ compiled regarding the transfer proposal. Conclusions must, at a minimum, describe:

(i) Whether, and to what extent, a valid water right exists;

(ii) Any relinquishment or abandonment of the water right associated with the water right transfer application as discussed in subsection (6)(d)(i) of this section;

(iii) The result, as adopted by the board, of any hydraulic analysis done related to the proposed water right transfer;

(iv) The board's conclusions of issues raised by any comments and protests received;

(v) Whether the transfer proposal will impair existing rights of others; and

(vi) If the proposed transfer is authorized pursuant to RCW 90.44.100, whether it is detrimental to the public interest. Public interest shall not be considered if the proposed transfer is authorized pursuant to RCW 90.03.380 exclusively;

~~((+d))~~ (e) Within a section entitled "~~((conditional))~~ decision": A complete description of the board's ~~((conditional))~~ decision, fully and comprehensively addressing the entire application proposal;

~~((+e))~~ (f) Within a section entitled "provisions":

(i) Any conditions and limitations recommended ~~((for inclusion in an approval or))~~ as part of an approved transfer, and/or any other corrective action necessary to maintain the water use in compliance with state laws ~~((or rules))~~ and regulations;

(ii) ~~((A description of))~~ Any requirement to mitigate adverse effects ~~((on other water rights, the water source, or the public interest))~~ of the project. Mitigation may be

proposed by the applicant or the board and be required in the board's decision; and

(iii) A schedule for development and completion of the water right transfer ((to a water right)), if approved in part or in whole, that includes a definite date for completion of the transfer and ((the)) application of the water to an authorized beneficial use.

((5) A water conservancy board's conditional decision and certificate is not a final authorization to transfer the water right. Only after ecology has approved the conditional decision and has issued an order authorizing the transfer, or has failed to act within the time frame established in RCW 90.80.080, is the applicant allowed to initiate the transfer of the water right.)) (7) Ecology may request additional information from the applicant or water conservancy board regarding the application and the board's decision, in addition to the requirements of subsection (6) of this section.

(8) A board's record of decision must clearly state that the applicant is not permitted to proceed to act on the proposal until ecology makes a final decision affirming, in whole or in part, the board's recommendation. However, if ecology does not act on a board's recommendation within the time frame established in RCW 90.80.080, the applicant is allowed to initiate the water right transfer pursuant to the board's record of decision after that period of time has expired. It is advised that the applicant not proceed until the appeal period of ecology's decision is complete, in compliance with WAC 173-153-180.

AMENDATORY SECTION (Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-140 ((Notification of conditional decision.))
What is the process for notifying parties of a record of decision and report of examination?

Who is notified of a board's record of decision and report of examination?

(1) ((The water conservancy board shall send notice of its conditional decision as to whether the transfer should be approved or denied, by mail to the applicant, ecology, to any person who protested or objected to the transfer, to any persons who requested notice of its conditional decision, and to any commenting agency or tribe. The board shall transmit notification of its conditional decisions to all parties on the same day, and will note that it has been sent to ecology.

~~Ecology shall identify the location designated for submission of the board's conditional decision.~~

~~(2) Boards must fully document their process of arriving at a conditional decision regarding water right applications. All original public documents received or developed by a water conservancy board and used during its deliberations for decision making for each application for transfer of a water right must be sent, with a clear copy of the conditional decision, to ecology at the location designated by ecology for permanent recordkeeping, within seven working days after the board has rendered its conditional decision. The board must retain a copy of all documents; any documents used in reaching a conditional decision regarding a water right transfer application must not be destroyed or disposed of, except as allowed by state statute.~~

~~(3) Any comments or objections that are received by the water conservancy board on its conditional decision within thirty days after a final decision is issued by ecology must be forwarded to ecology within five working days, at the location designated for submission of the board's determination.))~~
Ecology shall identify to all boards the ecology regional office designated for receipt of each board's records of decision. Boards shall hand deliver or send by mail records of decision and reports of examination to:

- (a) The applicant;
- (b) The ecology regional office;
- (c) Any person who protested the transfer;
- (d) Any person who requested notice of the board's record of decision;
- (e) Any tribe with reservation or trust lands contiguous with or wholly or partly within the area of jurisdiction of the board; and
- (f) Any commenting agency or tribe.

How is the record of decision and report of examination transmitted?

(2) Within five business days of a board's decision, the board shall simultaneously mail to all parties identified in subsection (1) of this section a paper copy of the following:

- (a) The record of decision;
- (b) The report of examination;
- (c) The application;
- (d) Public notices; and
- (e) Attachments to the application.

The board shall state to the parties receiving the record of decision and report of examination that it has been simultaneously sent to ecology. Whenever boards have the capacity to do so, they must transmit a signed electronic copy of the record of decision and report of examination to the ecology regional office on the same day that copies of the decision are mailed or hand-delivered.

(3) As stated in WAC 173-153-130, boards must fully document their process of arriving at a record of decision regarding water right transfer applications. Once the board has concluded its work on a water right transfer application, the board must submit to ecology, within fourteen days after the completion of ecology's review period, any remaining original documents not previously submitted to ecology in accordance with subsection (2) of this section, and any documents received or developed by the board related to its deliberations regarding the application upon which it has made a decision. All documents submitted shall be clearly marked with the board-assigned water right change application number on the water right transfer application pursuant to WAC 173-153-070(7). As noted, the original versions of these documents must be provided to ecology; copies are not acceptable for submission. These documents must be sent to the ecology regional office designated by ecology. The board may retain a copy of all of the above-mentioned documents. After the board completes its business on a water right transfer application, and upon submission to ecology of all records related to the application file, ecology shall be responsible for public records requests related to that file.

(4) Any comments received by a board regarding its record of decision within thirty days after ecology's final decision must be forwarded to ecology within five business days of the board's receipt of such comments by the board. For the purposes of this subsection, the term "receipt" refers to the act of a board commissioner or designated administrative support person for the board picking up the board's mail. These comments must be submitted by the board to the ecology regional office.

AMENDATORY SECTION (Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-150 What is ecology's review process of ((the)) a board's ((conditional)) record of decision((-))? (1) Upon receipt of a record of decision and report of examination, ecology shall document and acknowledge the date of receipt of such documents in writing to the issuing board. Ecology will post on its Internet site, generally within five business days, the record of decision, documenting the vote and signature of all board commissioners who participated in the decision, and the report of examination. For boards with the capacity to send signed documents electronically, ecology will post the record of decision and the report of examination generally within three business days of receiving the electronic version. The posted document will be referenced by both the board-assigned application number and by the ecology-assigned application number.

How does ecology review the record of decision?

(2) Ecology will review ~~((conditional decisions of approvals and denials))~~ all records of decisions made by water conservancy boards. Upon receipt of a ~~((conditional))~~ record of decision made by a ~~((water conservancy))~~ board, ecology will review ~~((the conditional))~~:

(a) The record of decision for compliance with state water laws and ~~((rules, policies or guidelines. As part of this review, ecology will also consider agency and tribal comments, any protests or objections filed by parties alleging that one or more of their water rights would be impaired by the transfer, and any other comments received regarding the conditional decision by the board.~~

~~(2))~~ regulations;

(b) The record developed by the board in processing the application; and

(c) Any other relevant information.

(3) In reviewing a board's decision, ecology may consider any letters of concern or support received within thirty days of the date ecology receives the board's record of decision.

(4) Ecology will not evaluate the internal operations of a board as it reviews a board's record of decision. Exceptions are to the extent that such review is necessary to determine whether the board's decision was in compliance with state laws and regulations concerning water right transfers, including

possible cases of a conflict of interest as identified in RCW 90.80.120.

What are ecology's potential review responses and how are the responses made?

~~(5) Ecology may affirm, reverse, or modify the ((conditional)) records of decision ((of the)) made by boards. Ecology's decision will be made in the form of a written administrative order and must be issued within forty-five days of receipt of the board's ((conditional)) record of decision by the ecology regional office, except that the forty-five-day time period may be extended an additional thirty days by ecology's director, or his or her designee, or at the request of the board or applicant in accordance with RCW 90.80.080. If ecology ((fails to act)) does not act on the record of decision within the forty-five-day time period, or within the extension period, the board's ((conditional)) record of decision becomes final. ((The forty-five day time period may be extended an additional thirty days by ecology's director upon the written consent of the parties to the transfer.~~

~~(3) If ecology modifies the conditional decision by the water conservancy board, ecology shall send a notice of modification of the conditional decision that specifies which parts of the conditional decision it was in agreement with, and which parts of the conditional decision it has modified. If ecology reverses the conditional decision by the conservancy board, ecology shall send a notice of reversal of the conditional decision with an explanation of the reversal.~~

~~(4) Ecology will send notice of its decision to all parties on the same day. Notice of ecology's decision will be sent by mail within five working days to the water conservancy board, the applicant, any person who protested or intervened before the board, persons who requested notice of its decision, the Washington department of fish and wildlife, and any affected Indian tribe.~~

~~(5) If ecology fails to act within the specified time after receipt of the board's conditional decision, the board's action is final. The conservancy board shall notify ecology, the applicant, and any parties that have expressed interest to the conservancy board about the application, of ecology's failure to act. If ecology concurs that the review period has lapsed, ecology will send a notice to the board that the conditional decision is final.)~~ (6) Ecology may issue an order affirming a board's decision. If ecology modifies the record of decision made by a board, ecology shall issue and send to the applicant and the board an order containing its modification of the record of decision. The order shall specify which part(s) of the record of decision ecology has modified. If ecology reverses the record of decision by the board, ecology shall send the applicant and the board an order reversing the record of

decision with a detailed explanation of the reasons for the reversal.

Under what conditions may ecology remand a record of decision to a board?

(7) Ecology may consider conflict of interest issues during its final review of a board's record of decision. In accordance with chapter 90.80 RCW, if ecology determines that a commissioner should have been disqualified from participating in a decision on a particular application under review, the director, or his or her designee, must remand the record of decision to the board for reconsideration and resubmission of the record of decision. Upon ecology's remand, the disqualified commissioner shall not participate in any further board review of that particular application.

(8) Ecology's decision on whether to remand a record of decision under this section may only be appealed at the same time and in the same manner as an appeal of ecology's decision to affirm, modify, or reverse the record of decision after remand.

Can a board withdraw its record of decision from ecology?

(9) If ecology has not yet formally acted on a record of decision by a board, a board may withdraw the record of decision during the period allowed for ecology's review. If a board withdraws a record of decision, ecology shall remove the record of decision from its Internet site and post a notice that the decision has been withdrawn. All of the associated documents submitted to ecology by the board with the record of decision will be returned to the board. A board may withdraw the record of decision under the following conditions:

(a) The board must follow chapter 42.30 RCW, the Open Public Meetings Act, in making a decision to withdraw the record of decision; and

(b) The board must send a notice of withdrawal of a record of decision to ecology on a form provided by ecology and identified as Decision to Withdraw a Record of Decision, form number 040-107.

Who is notified of ecology's order relating to a record of decision?

(10) Ecology will send its order to all parties on the same day. The order must be sent by mail, within five business days of ecology reaching its decision, to:

(a) The board;

(b) The applicant;

(c) Any person who protested;

(d) Persons who requested notice of ecology's decision;

(e) The Washington department of fish and wildlife;

(f) Any affected Indian tribe; and

(g) Any affected agency.

What is the process should ecology fail to act on a record of decision?

(11) Except as specified in subsection (5) of this section, if ecology fails to act within the specified time after receipt of the board's record of decision, the board's record of decision becomes the final order of ecology. If a board concludes that the time allowed for ecology to issue its order has lapsed, the board shall notify ecology, the applicant, any protestors, and any parties that have expressed interest to the board about the application that the time period has lapsed. If ecology agrees that the review period has lapsed, ecology will send an order to the board, and all entities listed in subsection (10) of this section, stating that the record of decision is final. If ecology disagrees with the board's conclusion, ecology shall work with the board to establish the beginning date of the review period based upon the date of receipt of the record of decision and report of examination by the ecology regional office.

AMENDATORY SECTION (Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-160 ((Perfection of a transfer approval.))
When is a board-approved water right transfer that has been affirmed by ecology complete?

Who provides documentation of the transfer when it is completed?

(1) When an ~~((approved))~~ affirmed transfer has been ~~((perfected))~~ completed and the transferred water right has been put to beneficial use, the person authorized to transfer ~~((a))~~ the water right must submit satisfactory evidence to ecology showing the transfer has been completed in accordance with ~~((the))~~ ecology's order authorizing the transfer of the water right. Upon verification of the extent of development as authorized, ecology will issue a change certificate, superseding permit, or a superseding certificate to the water right holder(s) to document that the approved transfer was accomplished ~~((upon verification of the extent of development as authorized))~~. When evaluating the proposed water right transfer application, the board will consider and address in the report of examination any issues pertaining to completion of the development or the application of the water to a beneficial use of water as it is proposed to be changed.

Who receives a copy of the document identifying the perfection of the transfer approval?

(2) When ~~((the))~~ a document ~~((is issued))~~, as described in subsection (1) of this section, is issued to the applicant, ecology shall provide a copy to the ~~((conservancy))~~ appropriate board for its records, if requested by the board. The document ~~((will))~~ shall also be recorded, at the applicant's expense, by the county or counties in which the ~~((use of))~~ water is ~~((made))~~ authorized for use.

~~((+2+))~~ **What happens if the approved transfer is not completed within the development schedule or if the change authorization is canceled?**

(3) If development of the approved transfer is not completed in accordance with the development schedule that accompanies the approval, extensions may be requested in accordance with RCW 90.03.320, and will be ~~((processed under standard procedures))~~ evaluated by ecology.

~~((+3+))~~ (4) If the person authorized to transfer a water right fails to accomplish the transfer in accordance with the authorization, or any subsequent extensions granted by ecology, and does not receive an extension from ecology, or fails to comply with the requirements of the transfer authorization, ecology will cancel the transfer authorization ~~((and the water right will revert to the original configuration, less any quantity that was relinquished for nonuse in connection with ecology's review of the conservancy board's conditional decision))~~. Upon cancellation of the transfer authorization, ecology will evaluate the water right to make a tentative determination as to the present validity of the water right and the conditions under which the water right can legally be exercised.

AMENDATORY SECTION (Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-170 What are a board's reporting requirements ~~((+))~~? Boards are required to submit reports to ecology on their activities at the end of October of each ~~((even-numbered))~~ year. The reports must be submitted to the water conservancy board coordinator on a form provided by ecology each year and must include information about board activities during the previous ~~((twenty-four))~~ twelve months. The reports shall contain the following information:

Water right transfer application data:

(1) Information about applications to the board, to include ~~((the following))~~:

(a) The number of applications filed with the board, identified by water resources inventory area (WRIA);

(b) ~~((Number of applications that received a public hearing to hear intervenors;))~~ The number of records of decision withdrawn from ecology by the board;

(c) The number of ~~((conditional))~~ records of decision~~((s))~~ approving or partially approving an application;

(d) The number of ~~((conditional))~~ records of decision~~((s))~~ denying an application;

(e) ~~((Number of applications for transfer of surface or ground water;~~

~~(f) Number of applications to transfer a claim or certificate;~~

~~(g))~~ The number of records of decision remanded back to the board from ecology;

(f) The number of applications received by the board, distinguishing between requests to transfer surface water and ground water;

(g) The number of applications to transfer a water right documented by a claim;

(h) The number of applications to transfer a water right documented by a certificate;

(i) The number of applications proposing transfer related to trust water;

(j) The number of applications filed directly with the ~~((conservancy))~~ board, and the number transferred from ecology to the board; and

~~((h))~~ (k) The number of hearings held within other counties other than the county or counties which established the board, when water rights were proposed to be ~~((changed between counties.))~~ transferred from one county to another.

Operational information about the boards:

(2) Information about the operations of the board, to include ~~((the following))~~:

(a) ~~((Chairperson of the board;~~

~~(b))~~ The chair of the board;

(b) The primary contact of the board;

(c) The board address, phone, and/or e-mail;

(d) The board commissioners' names and their terms of office;

(e) The regular meeting location, if any;

(f) The regular meeting schedule, if any;

(g) Any changes in membership of the board, including background and contact information for any new ~~((members))~~ commissioners;

~~((e))~~ (h) Current fees ~~((or))~~ and changes to ~~((previous))~~ previously set fees;

~~((d))~~ (i) Training received other than from ecology;

~~((e))~~ (j) Ownership of ~~((any properties))~~ property by the ~~((conservancy))~~ board;
~~((f))~~ (k) Water marketing activities ~~((and any related fees))~~;
~~((g))~~ (l) Number of staff ~~((that are))~~ employed by the board, and number of staff that provide volunteer service to ~~((r))~~ the board; and
~~((h))~~ (m) Any litigation in which the board is involved.

AMENDATORY SECTION (Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-180 ~~((Appeals-))~~ What actions may be appealed under this chapter? Any person aggrieved by ecology's decision to approve or disapprove the establishment or restructuring of a ~~((conservancy))~~ board, or by an ecology~~(('s decision))~~ order to affirm, reverse ~~((or))~~ modify ~~((the determination of a conservancy board on an application for transfer of a water right))~~, or remand a record of decision made by a board, may appeal the decision or order to the state pollution control hearings board in accordance with chapter 43.21B RCW.

AMENDATORY SECTION (Amending Order 98-11, filed 11/17/99, effective 12/18/99)

WAC 173-153-190 Existing rights are not affected. Nothing in this chapter is intended to impair any existing water rights.

AMENDATORY SECTION (Amending Order 98-11, filed 11/17/99,
effective 12/18/99)

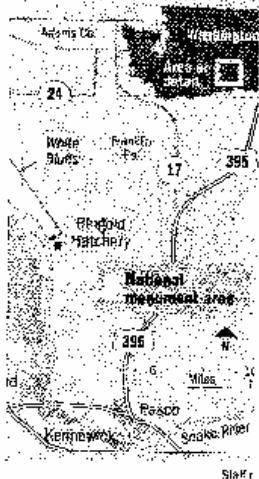
WAC 173-153-200 Will ecology review ~~((of))~~ this chapter~~((of))~~ in the future to determine if changes are necessary? This chapter ~~((must))~~ may be reviewed by ecology whenever new information, changing conditions, or statutory modifications make it ~~((necessary))~~ prudent to consider revisions. In carrying out such a review ~~((of this chapter))~~, ecology shall consult with existing ~~((conservancy))~~ boards.

APPENDIX C

...change the current pattern, but he thinks more are needed before any are built.

Don't think it was well planned, we have it," said Eldredge-Ridall, who works at a company turns on both arterials. "Let's ditch it and make it work."

...on how to manage Hanford Beach



...28 to collect comments from the in Seattle, Richland and Yuma, Wash. A final meeting is slated for Tuesday in Yakima.

...necists and some other boat- who have attended the meetings asked for a campground, said Ritter, deputy project leader. ...oup that trains bird dogs wants as for field trials, which are not permitted. Neighbors have d for such things as more fire resson.

...have taken several phone calls t wanting to make sure we nue to allow hunting" on the 10 acres where it's now allowed, id.

Grading the WASL Thursday Sept. 12, 6-8p Spokane City Council Chambers

Your education questions answered by
Terry Bergeson, Washington State Superintendent
Brian Benzel, Spokane Superintendent of Schools,
Principals, Teachers, and Parents

broadcast at future dates by Spokane Public Radio
KPAX 91.1 FM and KSPC 91.9 FM



North Coast Life

WASHINGTON STATE UNIVERSITY
SPOKANE



HEARINGS NOTICE Water conservancy board rule amendments proposed

WHEN: Tuesday, Sept. 24, 2002, 7:00 pm
Spokane Falls Comm. College
3410 W. Fort George Wright Dr.
Student Union Bldg #17, Lounge AB

Wednesday, Sept. 25, 2002, 7:00 pm
Ellensburg, Hal Holmes Center
210 N. Ruby

Thursday, Sept. 26, 2002, 7:00 pm
Lacey, Dept. of Ecology HQ
300 Desmond Dr., Auditorium

COMMENT PERIOD: Sept. 4 to Oct. 4, 2002

The Department of Ecology is holding hearings on proposed rule amendments to *Water Conservancy Boards, Chapter 173-153 WAC*, intended to make the rule consistent with legislative changes made in 2001 to the governing law on water conservancy boards. The amendments will also improve the guidance to conservancy boards and Ecology staff supporting them.

For more information, contact: Janet Carlson at
(360) 407-6274, email [jaca461@ecy.wa.gov]
Or: www.ecy.wa.gov/programs/wr/wrhome.html

For special accommodation needs or language translation call (360) 407-6607 (voice) or (360) 407-6006 (TTY). Ecology is an equal opportunity employer.

*Spokane Spokesman
Review - 9/11/02*

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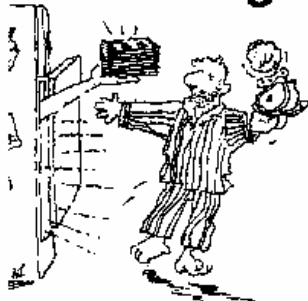
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Ellensburg Daily Record
9/11/02

Record - www.kvnews.com

refrigerator



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NATION

many people died that day.

Just last week one person counted among the dead set the record straight. "I'm not deceased," obviously, said Spica Chalco, 30, who escaped from the 36th floor of the north tower and

melancholy song.

The numbers also speak of resolve and recovery. They said it would take six months, at least, to demolish the section of the Pentagon smashed by an airliner; it took one month.

Credit union r looted \$15 million the ATMs into cash many as 4,000 their accounts by more; 66 were air fraud charges last n Count some b too.

Some 2,600 I employees were immediate vicinity crash. Thanks to a reinforced framework section did not collapse in 35 minutes and was able to get away. Killed 125 people building and all 6 plane.

The big number of description — story towers turned million tons of debris on in direct New York building men and insuring the entire eco Afghanistan; 83,000 York jobs; twice it people coming to Washington under posed Homeland Department.

From the night forward, many of statistics were of own making.

Fifteen hulking 500 cruise missiles, aircraft — that a stormed the sky Afghan cities from bases and ships at U.S. answer to 9 joined by the British.



HEARINGS NOTICE

Water conservancy board rule amendments proposed

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The
Olympian
9/11/07

Flooding, storms leave at least 26 dead in France

THE ASSOCIATED PRESS

NIMES, France — Flooding and heavy rain in southeastern France have claimed the lives of 26 people, authorities said Tuesday. Rescuers were searching for dozens of others reported missing.

In the village of Aramon, swamped by floodwaters after a dam gave way, rescuers said 30 people were unaccounted for. Twelve other people also were reported missing.

Train service was being re-established among major points like Nîmes, Montpellier and Avignon, the state-run railroad authority said. But hundreds of thousands of people struggled without electricity or telephone service.

Prime Minister Jean-Pierre Raffarin and Interior Minister Nicolas Sarkozy surveyed the storm-

battered area by helicopter and visited flood victims at shelters and in streets.

"We're here to show national solidarity," Raffarin said in Villevielle, near the medieval town of Sommières. He said the government would release an initial \$9.8 million for the region.

Many rivers in the Gard, Vaucluse and Hérault regions overflowed their banks and dikes burst as torrential rains began pounding the area on Sunday. Waves of water flushed the streets of villages, leaving them submerged. As the rain eased Tuesday, the cleanup began.

Electricity was slowly being restored, but tens of thousands of homes were still without power. Some 150,000 telephone lines had been cut, according to LCI television.



KPS SOUND	
AGE CATEGORY	CL M.
Subscriber Age ²	Non-
<25	\$ 5
25-29	\$10
30-34	\$12
35-39	\$14
40-44	\$17
45-49	\$20
50-54	\$25
55-59	\$29
60-64	\$36
65+	\$36
Each Dependent Child	\$ 6



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Focus

APPENDIX D

Water conservancy boards: proposed rule amendments

FOR MORE INFORMATION

Web Page

A copy of the proposed rule plus more details on water conservancy boards can be found at:
www.ecy.wa.gov/programs/wr/wrhome.html
Click on Conservancy Boards

Ideas and suggestions can be submitted online.
Not online? Try your local library or college.

Contact

Janet Carlson
Dept. of Ecology
PO Box 47600
Olympia WA 98504
(360) 407-6274
Fax: (360) 407-6574

A FORMAL PUBLIC COMMENT PERIOD AND HEARINGS ON THE DRAFT RULE WILL BE HELD DURING SEPTEMBER 2002

Boards in Washington

Adams	Lewis
Benton	Lincoln
Chelan	Okanogan
Douglas	Spokane
Ferry	Stevens
Franklin	Thurston
Grant	Walla Walla
Island	Whatcom
Kittitas	Whitman
Klickitat	

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Introduction

In 1997 the Legislature authorized creation of water conservancy boards under Chapter 90.80 RCW to enable the processing of water-right transfer and change applications at the local level. This legislation allows counties to establish water conservancy boards as independent units of local government through resolution of the county or counties that these boards will serve upon approval by the Department of Ecology (Ecology). All water conservancy board decisions are ultimately reviewed and affirmed, reversed, or modified by Ecology.

Each water conservancy board consists of three or five commissioners. All board commissioners must receive training from Ecology before participating in any decision on a water-right transfer application. A water conservancy board can serve a single watershed, multiple watersheds, a county, or multiple counties. There are currently 20 water conservancy boards operating in Washington.

The current rule

The 1999 water conservancy board rule (WAC 173-153) was adopted to establish procedures Ecology and water conservancy boards must follow in implementing the law.

The rule amendments

In 2001, the governing law on water conservancy boards was substantially changed. The proposed rule amendments to WAC 173-153 are intended to make the rule consistent with the amended law and improve the guidance to conservancy boards and Ecology staff supporting them.

The following topics are covered in the rule amendments:

- Ecology's technical assistance to water conservancy boards on matters relating to water right change applications.
- Withdrawal of water conservancy board decisions from Ecology back to individual conservancy boards.
- Dual filing of a water right application to a water conservancy board and Ecology.
- Conveying applications previously filed with Ecology to water conservancy boards.
- Dissolving an established water conservancy board

- Scope of authority (2001 statute broadened water conservancy boards' authority).
- Protests and letters of concern.
- Conflict of interest.
- Alternate board commissioners.
- Restructuring boards (3 or 5 commissioners, single or multi-county, single or multi-watershed).
- Definition of a water right holder and a non-water right holder in the context of identifying potential water conservancy board commissioners.

Status of water conservancy boards

Water conservancy boards were created to assist Ecology in processing water-right change applications and to provide localized service to the community in which they are created. The water-right change application backlog was a major focus of the legislative 2001 water reform package that became effective May 2001. The water conservancy boards' ability to successfully process water-right changes will provide important additional assistance in meeting Ecology's goal of reducing the current backlog of approximately 1,900 water-right change applications.

During the past three years, water conservancy boards have been established in 20 counties (16 in Eastern Washington and 4 in Western Washington) and all board members have been trained, as required, by Ecology. Most of the water conservancy boards are already processing water-right change applications. An operational guidance document prepared by Ecology serves as interim guidance until the rule amendments are final.

For more information or to send informal comments on the draft rule amendments, see the box on page 1.



Notice

APPENDIX E

Comment period, hearings on proposed rule amendments for water conservancy boards

COMMENT PERIOD SEPT 4 TO OCT 4, 2002

Hearings

Spokane

Tuesday, Sept. 24, 7:00 pm
Spokane Falls Comm. College
3410 W. Fort George Wright Dr
Student Union Bldg #17
Lounge AB

Ellensburg

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210 N Ruby

Lacey

Thursday, Sept. 26, 7:00 pm
Dept. of Ecology HQ
300 Desmond Dr.
Basement Auditorium

For More Information

Web Page

A copy of the draft rule plus more details on water conservancy boards can be found at:
www.ecy.wa.gov/programs/wr/wrhome.html
Click on Conservancy Boards

To Submit Comments

Online: see web page

Mail: Janet Carlson
Dept. of Ecology
PO Box 47600
Olympia WA 98504
Fax: (360) 407-6574

Rule Questions:
Janet Carlson
Phone 360-407-6274

The Department of Ecology (Ecology) will hold three public hearings on the proposed rule amendments to Water Conservancy Boards Chapter 173-153 WAC during which staff will explain the rule amendments, answer questions, and record testimony. (See side bar.)

The rule amendments

The 1999 water conservancy board rule (WAC 173-153) was adopted to establish procedures Ecology and water conservancy boards must follow in implementing the law.

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- Protests and letters of concern.
- Conflict of interest.
- Alternate board commissioners
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The hearings

Background

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Boards in Washington

Adams	Lewis
Benton	Lincoln
Chelan	Okanogan
Douglas	Spokane
Ferry	Stevens
Franklin	Thurston
Grant	Walla Walla
Island	Whatcom
Kittitas	Whitman
Klickitat	Yakima

For more information or to send informal comments on the draft rule amendments, see the box on page 1.

Please let us know if you would like to be removed from this mailing list. Just send the request to the address list in the box on page 1.

Instead of mail, how about email? Join the Water Resources Email List at www.ecy.wa.gov, and click on Email Lists the button at the top of the page.



News Release

FOR IMMEDIATE RELEASE – Sept. 4, 2002
02-166 DFT

Comments sought on proposed rule updates for conservancy boards

OLYMPIA – When state lawmakers adopted a water-reform package in 2001 to help the Department of Ecology (Ecology) reduce its water-right application backlog, the legislation also made changes regarding how water conservancy boards function.

Water conservancy boards are independent public bodies created by county governments. Boards help process water-right change requests, although Ecology determines whether or not to approve a board's record of decision. The department also trains individual board commissioners regarding state water law.

After the legislature passed its 2001 law, a number of local boards requested that Ecology update its existing 1999 rules to help boards comply with new water-right processing measures.

Ecology is seeking public comment on a number of proposed rule updates that include:

- Restructuring boards including the number of commissioners and the geographic jurisdiction of a board. .
- Scope of board's authority.
- Treatment of public protests and letters of concern.
- How to forward applications previously filed with Ecology to conservancy boards.
- Methods for dissolving established boards.

There are 20 boards operating in **Adams, Benton, Chelan, Douglas, Ferry, Franklin, Grant, Island, Kittitas, Klickitat, Lewis, Lincoln, Okanogan, Spokane, Stevens, Thurston, Walla Walla, Whatcom, Whitman and Yakima** counties. From July 1, 2001, to June 30, 2002, Ecology processed 456 water-right change applications. Conservancy boards assisted the agency with 14 percent of its decisions.

"Conservancy boards are a key partner in helping us reduce the water-right application backlog," said Joe Stohr, who manages Ecology's water-resources program. "It is vital we give the boards the tools they need to help get water to where and when it is most needed for farmers, communities and other economic and environmental uses."

The public-comment period for the proposed rule starts today and ends Oct. 4. The department will hold three public hearings:

- **Sept. 24 in Spokane** – 7 p.m. at the Spokane Falls Community College, Student Union Building No. 17, Lounge AB, 3410 W. Fort George Wright Dr.,

- **Sept. 25 in Ellensburg** – 7 p.m. at the Hal Holmes Center, 210 N. Ruby
- **Sept. 26 in Lacey** – 7 p.m. at the Department of Ecology basement auditorium, 300 Desmond Dr.

To receive a copy of the proposed amendments to the water conservancy board rule or to submit comments electronically, visit Ecology's Web site at <http://www.ecy.wa.gov/programs/wr/wrhome.html>. Written comments and questions should be mailed to Janet Carlson, Dept. of Ecology, P.O. Box 47600, Olympia, Wash., 98504-7600, or faxed to 360-407-6574.

###

Media contact: Curt Hart, Public Information Manager, 360-407-7139; pager, 360-971-9610

For more information about the rule: <http://www.ecy.wa.gov/programs/wr/wrhome.html>
Ecology's Web site: <http://www.ecy.wa.gov>

Broadcast version

The state Ecology Department is seeking public comment on a set of proposed rule amendments governing how water conservancy boards will function in Washington. The new rules are needed to help boards comply with new laws governing how water rights are processed.

Water conservancy boards are independent public entities created by local county governments. They help Ecology process water-right change requests, although the department has final say whether or not to approve a board's recommendation.

Public hearings will be held in Spokane, Ellensburg and Lacey. Public comments are being accepted through October 4th. For more information, contact the Department of Ecology by phone or through the Internet.

APPENDIX G

Copies of Written Comments

See Comment 4 for response to this comment

From: William Attwater [<mailto:wisewater@earthlink.net>]
Sent: Wednesday, August 28, 2002 6:22 PM
To: Carlson, Janet
Subject: proposed wac 173-153-043

THIS IS TO INFORM YOU THAT , AS CHAIR OF THE ISLAND COUNTY BOARD, I THINK THE SUBJECT SECTION IS UNNECESSARY AND WILL HARM SMALL COUNTIES LIKE ISLAND COUNTY. AT THE SAME TIME THAT ISLAND COUNTY'S BOARD WAS APPROVED, DOE PUT EXTRA STAFF TO WORK HANDLING THE CHANGE BACKLOG IN THE COUNTY. THE BOARD HAS ONLY HANDLED ONE APPLICATION AND ITS NOT CLEAR AT THIS POINT WHETHER OR NOT THAT CHANGE APPLICATION WILL GO FORWARD OR WHETHER IT WILL BE TAKEN OVER BY DOE SINCE, ACCORDING TO DOE, THE UNDERLYING CERTIFICATE IS IMPROPER. SINCE FORMING A CONSERVANCY BOARD IS A SOMEWHAT LENGTHY PROCESS IT APPEARS SHORTSIGHTED TO PUT INTO REGULATION A TWO YEAR TERMINATION RULE. YES, I KNOW THE RULE SAYS MAY, BUT IT STILL CASTS A CLOUD OVER THE BOARD. ALSO, WHAT HAPPENS IF TWO YEARS GOES BY AND A COUNTY BOARD IS IN THE MIDDLE OF HANDLING AN APPLICATION FOR CHANGE?

THE SMALL COST TO THE STATE FOR YEARLY TRAINING FOR THREE BOARD MEMBERS SHOULD BE WEIGHED AGAINST THE FUTURE NEEDS IN ISLAND FOR A CONSERVANCY BOARD ONCE DOE HAS CHEWED THROUGH THE BACKLOG AND DEPARTED FOR OTHER COUNTIES. BILL

--- William Attwater
--- wisewater@earthlink.net

See Comments 1, 2, 3, 5, 6, 7 for responses to these comments

From: Bob Rolfness [<mailto:gcwcb@bentonrea.com>]
Sent: Friday, August 23, 2002 10:47 AM
To: Carlson, Janet
Cc: CELP Public Document Submission
Subject: WAC Comments

Janet - Thank you for the heads up on the public meetings for the revised WCB WAC rule.

In looking over the proposed WAC 173-153, a couple personal comments.

1. I don't believe it states anywhere a WCB is to obtain a copy of the full DOE file material supporting a water right on which they are working. Doing this is a ERO requirement and you might want to include it in the WAC. Also some words about who pays the copying costs, etc.

2. The proposed rule states WCB are to use three [3] DOE numbered forms in their process. i.e. The Water Change Application, The ROD, and ROE forms. Are the other forms that have been distributed to us as samples included as an appendix to this rule, etc.? I agree with the way it seems to be now, only the 3 forms, but if the others are to be also used might suggest this would be a little too confining to the WCBs.

Or, if all of the forms are to be used, how about a form requesting Technical Support for reviewing the Casing requirements of a new proposed well? Getting a hydrologist's [sp?] input for all new wells casing requirements is a ERO requirement for us. A standard request for help form would have on it the all the information required for their help.

3. Middle of Page 14 subpar (4) where it talks about impairment on old, not acted upon, water right transfers applications must be considered. Might add a line saying Old water right APPLICATIONS need not be considered. [New 2 lines law, just passed I think]

4. Might add some words about RETURN FLOW calculations.
a] General words about the concept and use of ----
b] Applied to the WHOLE existing permit, even if only 10% of the old right is being changed.
c] Suggested sources for RETURN FLOW numbers.

5. Page 33 WAC 173-153-150 I'm in complete agreement. But suggest DOE could supply the WCBs with the software to convert their submitted RODs to the format used to post it on the web site for public review. All WCBs have computers and there isn't a need to say words like we "could" submit an electronic file copy. Just have us also submit a MICROSOFT WORD format file of the ROD. Problem is all of us can easily submit such a file, but it isn't a signed copy as would be required by the proposed WAC. To do this requires scanning or translation software most do not have. Hence my note about the software.

6. All the WCBs have been requested by CELP to sent them every correspondence with DOE. I support the need for public documents being

made public, but question the procedure. Any words in the WAC that cut down on this paper work "over head" would be appreciated. I was thinking something like DOE communications that go to all WCBs need not be sent to CELP as DOE does this automatically. CELP should be paying for at least 25 copies of the same old non important coordination type email. <grin>

I think the proposed WAC is very good and you can tell a lot of work and thought have gone into it.

Looking forward to saying HI at one of the public meetings. I assume the one in Ellensburg.

Regards,

Bob Rolfness
GC WCB

See Comments 8 through 17 for responses to this comment:

From: DOlsenEcon@aol.com [mailto:DOlsenEcon@aol.com]
Sent: Thursday, October 03, 2002 1:43 PM
To: Carlson, Janet
Subject: BCWCB Rule Comments

Janet:

Please see attachment...

Thanks
D.O.

Attachment:

***Benton County Water Conservancy Board
Information Memorandum***

DATE: October 3, 2002

TO: Ms. Janet Carlson, WADOE Olympia

FROM: Darryll Olsen, Ph.D.
Chairman, Benton County Water Conservancy Board
509-783-1623, FAX 509-735-3140

SUBJECT: Comments on Rule Amendment, WAC 173-153
Water Conservancy Boards

I have reviewed once more the rule amendments for WAC 173-153.

As in my previous review, there are a few administrative features of the rule that are troublesome, but substantively, it appears to track well the changes made to RCW 90.80

As such, I am attaching my previous comments to you (on the earlier draft) for the official record at this time. Some recommendations appear to have been accepted and others no so.

Also, I will call you to follow-up on a couple of issues relative to the rule.

**BCWCB 3030 W. Clearwater, Ste. 205-A
Kennewick, WA 99336, 509-783-1623**

***Benton County Water Conservancy Board
Information Memorandum***

DATE: May 28, 2002

TO: Ms. Janet Carlson, WADOE Olympia

FROM: Darryll Olsen, Ph.D.
Chairman, Benton County Water Conservancy Board
509-783-1623, FAX 509-735-3140

SUBJECT: Comments on Draft Revised WAC 173-153

Thank you for an opportunity to comment on this preliminary draft. It is clear that WADOE staff have worked extensively on it.

The comments offered below primarily deal with minor administrative issues, rather than substantive issues concerning the interpretation of RCW 90.80 and how it should be implemented. Also, because the DRAFT WAC already contains direct tracking editing, comments provided are descriptive, not specific text changes.

Comments:

- %o **Section 173-153-060 Scope of Authority of Water Conservancy Boards.** RCW 90.80 virtually grants to the Water Conservancy Boards (Boards) the same authority for water right change/transfer decisions as that held by the WADOE. Seasonal transfers are not noted under Sec. (1); and if they are conducted by a Board, the procedure should be the same as possible as that conducted by WADOE. The BCWCB has recommended to applicants that they do such changes/transfers directly with WADOE—but the BCWCB would do so if special circumstances required it.
- %o **Section 173-153-070 Application for transfer of a water right.** The BCWCB has not charged a fee to applicants until after the Board formally accepts an application for review and processing. As such, we suggest eliminating Sec. (2)(b), as a requirement for a “complete application.” Typically, we invoice applicants after sending-out public notice, indicating that actual application processing will take place.

**BCWCB 3030 W. Clearwater, Ste. 205-A
Kennewick, WA 99336, 509-783-1623**

- %o **Sec. 173-153-080 Public Notice.** The comment here pertains to the timing of the control numbers, relative to publishing public notice. We suggest that receiving the control numbers should be an independent action from publication. As a matter of efficiency and public notification, the BCWCB usually sends-out copies of the application and public notice—to WADOE and all interested parties—at the same time. “Tracking” the water right application is not dependent on the control numbers (adding a “C” or “@1” to the water right numbers), as the application identifies the water right by the existing water right number. When we issue the ROE/ROD, we then identify the “changed” water right by the new control number. There does not appear to be a compelling need to require a control number prior to sending-out publication.
- %o **Sec. 173-153-090 Protests.** It appears there may be a typographical error in Sec. (1). The existing text refers to “A protest against granting an application...” This probably should read “A protest against granting a change/transfer decision...”
- %o **Sec. 173-153-110 Examination of Application.** Under Sec. (2), the P.E. requirement for submitting hydrologic data to the Boards is not pragmatic or needed. Information is often provided from agency staff (USGS or NRCS) or private contractors that have appropriate experience or knowledge to deal with site-specific issues. The intent here is understood, but this is overkill relative to real-world review and conditions.
- %o **Sec. 173-153-110 Sec. (5).** This should be clarified, so that consultation to planning groups pertains to applicable situations, otherwise this is a waste of all parties’ time (suggest you include the phrase directly involved here to note some distinction).
- %o **Sec. 173-153-130 Records of Decision and Reports of Examination.** We would suggest here you clarify that forms or formats for the ROE/ROD are based on joint review or development between WADOE and the Boards. There has been considerable change to these documents during the past two years (including Ecology’s “old” format) and further changes will likely be made as well, based on input from both parties.
- %o **Sec. 173-153-150 Ecology’s Review of Board’s Record of Decision.** There may be some minor confusion in Sec. (1) regarding electronic posting of the “signed” decision relative to the “approved” decision. We send an electronic version with the Board chairman’s (electronic) signature on the ROE/ROD, and attach the actual ROD signature sheet to the ROE/ROD. We suggest using the term “approved” rather than “signed” to avoid any confusion.
- %o **Sec. 173-153-150 Sec. 5.** The WADOE should include a provision for consultation with the Board prior to issuing any remand of a completed Board decision, as related to this section. This need for this consultation should be obvious.

%o Sec. 173-153-150 Sec. 7. If WADOE issues a rejection order for a Board decision, then the WADOE must explain in detail why the rejection has been issued, including an appropriate legal assessment where appropriate. That is, the WADOE must fully explain its action, not just state the action as a conclusion. *The level of such detail should be no less than that provided by the Board to reach its decision.*

Again, most changes we recommend reflect administrative procedures. We will follow-up with you to discuss further.

See Comments 18 through 23 for responses to this comment:

FirstName: Jerald and Lorre
LastName: Gefre
Title:
Organization: Concerned Morningside Citizens
StreetAddress1: 16290 Hwy 24
StreetAddress2:
City: Moxee
State: WA
PostalCode: 98936
Email: jgefre42@hotmail.com
Submit: Submit

Comments:

We have had experience with the Yakima County Water Conservancy Board in the Dennis water rights changes case and have the following comments. We could not download the proposals.

The Yakima Board was very abrasive towards protestors of the Dennis/DeVries proposed changes. Calling us non-experts and chastising us for commenting on or disputing the DeVries positions was the norm. Pertinant information from local residents was ignored. Protestors in the crowd were ignored while supporters of Dennis/DeVries were announced and read into the record. Dennis/DeVries were allowed to utilize the protestors time for their own presentation by their experts.

We still have not received documentation (tapes or typed minutes) of at least two critical meetings. The information we did get was received only after weeks and months of badgering the board secretary.

The board received input from Dennis/DeVries at at least one meeting where oponents were told that no action or input was going to be taken concerning the Dennis/DeVries case.

Board members discussed the case with Dennis/DeVries "experts" in their homes, on the telephone and other places away from the board meetings where no representatives of opponents were present.

The make up of the Yakima Board was a farmer, a banker and a businessman. All of these people (fields) have a vested interest in approving changes such as Dennis/DeVries were asking for. There was no "outside" representation on the Board.

DOE very seldom had a representative present at meetings, even at critical junctures of Conservancy Board meetings.

We encourage the following actions:

Water Boards be made responsible for complete compliance with the freedom of information act.

Water Boards be made responsible for advertising date, time and location of their meetings according to established rules.

Water Boards be made responsible for assuring that input from all participants be treated with respect and given proper weight in Board decisions.

Water Board membership should include at least one person from outside the business/political fields. This person should come from a non-business background and preferably have an ecological background.

Bottom line? Boards should be more representative of a diverse general public (need more explicit rules here for the County Commissioners to follow in selecting members?); boards should be required to follow rules and show no bias' in decision making; DOE needs to have a representative present at critical meetings where their expertise can help settle some of the contested issues and lessen the chance of DOE overturning or altering Conservancy Board decisions. Board members should not be exempt from punishment for acts contrary to rules that have been set out for them.

Thank you for your time, please get back to us.

Jerald and Lorre Gefre

See Comment 24 for responses to this comment:

RECEIVED

OCT 07 2002

Water Resources Program
Department of Ecology

Public comment for Conservancy Board
rule changes

Water transfer proposals involving an
existing surface water right to be used as
a mitigation source for a new ground water
withdrawal will include an evaluation of
groundwater temperature for summer and
winter conditions and surface water temperature
for summer and winter conditions.

This clarification will help support existing
habitat restoration efforts and availability of
winter stock water.

Mike March Mike Marovich
5611 No. 81 Rd
Ellensburg Wa. 98926

See comments 25 through 47 for responses to these comments:

HEARINGS OFFICER: Let the record show it is 7:55 on Wednesday, September 25th, 2002 and this hearing is being held at the Hal Holmes Community Center in Ellensburg, Washington.

When I call your name, please state your name and address for the record.

Mary Burke.

MS. MARY BURKE: Thank you, Christine. My name is Mary Burke. I'm a resident of Kittitas County. I am currently a member of the Kittitas County Water Conservancy Board. These comments I'm making, however, are from my personal remarks. They are not a formal comment from the board in general and I would like the record to know that. I have a number of comments here. Some of them are questions or things I would like the Department to address. Some of them -- all of them now, at the request of this format, because there is very few people here and they've asked that I formally put this on the record. And if I'm not saying this all in the proper order. I beg your pardon, but I will try to address these by page and number.

Under the new WAC 173-153-030 definitions, the word "Definitions" has been stricken and it's now a question, "How are terms defined in this rule?" I would prefer it says "Definitions," but I understand this is a determination of the Department to now have headings in questions, which I find a little awkward for my format but I would just note that.

On page 2 in the same section there are two bullets that have to do with alternates. I have a question about the second bullet on page 2 at the top, "Cannot take the place of a commissioner on a temporary basis." I would like the Department to rethink that to see if there isn't a time when a person could temporarily set themselves aside for one reason or another and have the alternate take their place so that the Conservancy Board could continue to function.

In the middle of the page under the Consumptive Use definition it says, "'Consumptive use' means use of water whereby there's a diminishment of the water source." I have not been able to find any usual definition comparable to that definition and I would request that the Department rethink that definition and see if we can't come up with another one that is at least compatible with the adjudication in the Yakima basin which is the area in which I sit upon this board.

On page 3 under the definition of "Water right holder" the last part of the sentence, last sentence says, "owned water right which is appurtenant to the land they own or in which they have a majority interest." I call to the Department's attention that a person who is legally married or in some other cases in a partnership agreement in a company cannot have a majority interest and at least I will at least speak for my own personal belief, which I don't think you should have to have a majority interest within your community property interest and I'd ask that that be revisited.

On page 6 this is, "What is included in a petition to ecology for the creation of a board?" But there's definition here, "beneficial use," and I find that "beneficial use" extremely awkward because the persons are asked to

be subject to sufficient cause or exempt pursuant to 90.14.140 and the counties are counties which initiated the petition and in some cases one could read that to say that you would have to either have permission from the Department, which I think is unconscionable or to be adjudicated before you could petition. And I don't think that fits the statute and I would just like to ask the Department to revisit that, because I don't think that was their basic intent in doing that, either, to preclude counties from having boards.

On page 10, which is the AMENDATORY SECTION, 173-153-050, What are the training requirements for board commissioners, and I'm concerned here a little bit about the retraining or additional training because some of us are finding some awkwardness in how to find things to do that will conform to that and confirm our training. And I think perhaps that needs to be revisited and I won't just read all that in there, but I have explained some of my questions about that to Janet Carlson and I think she's aware of those.

On Page 12, excuse me. I'm sorry. I don't mean to lose my voice. On Page 12 under 153-060, "What is the scope of authority of a water conservancy board." It's No. (d) which says, "Perform other activities as may be authorized under chapter 90.80, subject to other applicable state laws and regulations." I think that maybe needs a little further explanation.

Under (2) (b) I find this very awkward. It says, "As part of the process described in subsection (2) (a) of this section, boards should determine whether a watershed planning unit is involved in planning related to the source of water that would be affected by the application being considered. If so, the board should notify the planning unit of the application, and consider comments from the watershed planning unit prior to issuing its record of decision." I think a lot, most counties, probably, have done some 25.14 planning and if the planning unit and going to -- has to make comments before one could issue a decision, if that's the intent of that WAC, I think that's going to become extremely burdensome and one of the reasons for forming conservancy boards was to do some of this in a timely fashion. And I think that would add a great burden, at least in time, to the process.

On page 14 it is 153-070, "What does an applicant need to know about filing an application for transfer of a water right? How are applications accepted for processing by a board?" In the statute, I'm sorry, I cannot cite you the specific place in the statute, but 90.80 is pretty particular about the board people not being -- having some removal and acting in some quasi judicial fashion and yet at (3) here it says, "A water right transfer application is considered filed when it is received by a board commissioner, or a designated administrative support person for a board." I find that a little awkward in that one could hand a board commissioner their application and I'm not sure that fits with the statute and that needs to be at least further defined. And secondly, if the board commissioners are going to accept them, I mean you could go to coffee some morning and have somebody hand you an application and I would find that a little bit awkward having sat on some other boards and I'd like to have that further defined, at least.

No. (4) says, "An application may propose the transfer of no more than one water right." And we have had a number of cases in this county and I think other counties where the water rights are -- don't get me wrong. I'm not talking here about commingled waters -- but the water right is a water right for more than one purpose. And I think that needs to be said that whether we're talking about the priority date or what it is or what, because a lot of

water have a separate application to transfer your irrigation right, your stock water right, your fire control right and your domestic right. And I would like that clarified slightly better.

On page 17, which addresses the time frames of a number of things and I'd just without addressing either of these -- excuse me, any of these in any particular time frame, I think some of the time frames -- and I did note that Ms. Carlson did say that these are boards who are not paid and have no staff and no money and in some cases the time frames if they are going to be any lesser than they are now sometimes cannot be met. And I think boards that are doing the best they can do with very little support in some instances need some longer time frames than that. And in some cases we have had to drive things to Yakima to be filed and that sort of thing and parts of the year you just can't simply do that. So I'd like the time frames not to be very restrictive.

At No. (20) on page 17 it says -- excuse me. Let me see where I am -- "Boards must ensure that copies of the application accepted by them for processing are provided to interested parties in compliance with existing laws, as well as with current ecology memoranda of understanding, policies and other guidance." And I have a problem with that because it's not defined as what they are. I mean, a board could very happily be processing water rights according to statute in their own procedures and find out there's something there that we don't know. I think it should be the responsibility of somebody who says if you're going to have to do these certain things they need to be provided to the boards. This is not very precise. "To assist the boards in this, ecology will provide a list of potentially interested parties," and I think a party defined under law should be an interested party or not --potentially interested party doesn't fit Aquavella at all and I think that's extremely awkward because we are processing water rights within an adjudication which have identified themselves to ecology. If we have a separation of local government they need to be identified properly by usual procedures to the board. "Additional interested parties, including Indian tribes, may request copies of applications from boards." And I think if they submit a request for the applications, I think all boards are now sending them to them. But No. (20), I guess I found the language befuddling. So I don't think I have any objections to it except the boards can't meet it and I think it needs to be rewritten in a more precise way.

No. (21) I don't understand, either. "A copy of each application accepted by a board shall be provided to any Indian tribe that has reservation lands or trust lands contiguous with or encompassed within the geographic area of the board's jurisdiction." I'd like to call the Department's attention that there are some trust lands outside reservations. I'm sure they know this. And if they're going to do this, I think there needs to be a process by which the people want the information requested from the board, otherwise the board is going to spend an awful lot of time doing some research and I don't think that was the intent of the statute.

On page 18, under 153-080 it says, "What public notice is given on a water right transfer application before a board?" Oh, it says, "The board shall publish," and it's stricken, "or require the applicant to publish." One, our boards have no money. Secondly, the applicant is the person who should be responsible for seeing that the legal description and the water right is correct and publish that and I really have some problems with asking the board to take over the responsibility of the applicant. One, it may lead to some errors and secondly it's very costly to the board.

On page 22, this is the section on "What other entities must be consulted when a board examines an application?" No. (8), "When public interest applies to the application evaluation or when there may be existing rights that could be impaired, board shall determine" -- but I think the board's already determined under 380 whether existing rights could be impaired and also under 90.44 -- "determine whether an Indian tribe, watershed planning unit, or other governmental body is involved in planning or water management related to the source of water that would be affected by the application." Well, one, watershed planning units do not own water rights, they are a planning unit and I think that expands their authority no end and I would object to that. And secondly, I think the board should not -- the people who want to be involved with these, if they are published, should notify the board. The board can't go doing research to see if anybody is involved with this. But the inclusion of the watershed planning unit I find outside the statute that controls watershed planning.

On page 23, under (12), and I do understand that I did ask that this be defined. This is not the definition that I think is so helpful, however. Sorry about that. But it says, "When a board receives an application to transfer a water right that is an area subject to an ongoing general water rights adjudication process" -- I think it should just say subject to, not an area. It's not an area, it's the water right subject to the adjudication -- "the board shall consult with ecology prior to processing the application," and I don't know what that means. Does that mean we can't accept them? Does it mean we can't process them? Does it mean we can't look at them? And every transfer that we are going to get been the Yakima basin, Yakima, Kittitas and Benton counties we have to consult with ecology and then ecology is to seek guidance from the pertinent superior court regarding the court's role in administering the water rights that are subject to the adjudication. And then at the end it says, "Ecology shall then advise the board on whether and how the board may address the application." And I understand what we asked for was how to do this in an adjudication, but I don't know how we can continue to accept applications without going to ecology and then all of us going to the court and I'd like that -- I understand we need to address it, particularly after that bifurcated appeal process, but I'd like us to define that more precisely. And I would request that Fred and Janet meet with the three boards in Kittitas, Yakima and Benton counties before this WAC is adopted so we don't stop the whole world while we figure out where we are, because I would view it as being that.

On page 24, No. (4) it says, "A board may also request and accept assistance and support from the government or governments of the county or counties in which it operates." That, I understand. I wish they would give us some money. But then it says, "as well as from other interested parties." And, you know, boards who operate with no funding usually are happy to take money from people, but when a board is a quasi judicial, set aside, autonomous, separate of local government we need to say who are other interested parties. And the conflict of interest situation, I think that's a little awkward.

No. (6) I guess is okay, but I'd like it explained further. At the bottom of page 24, "Technical assistance and training provided to a board is not subject to the Open Public Meetings Act." So, I assume that means we can meet without having a meeting subject to the Open Public Meetings Act, but in the other sections where we're getting technical assistance from the Department, then that might bear upon an application and I think we -- I'd like to think about that a little more.

On page 25, "What's included in the report of examination?" I think we need a little more explanation of exactly what it is that we're required to do here. It says, "It is the responsibility of the water conservancy board to ensure that all issues identified during its evaluation of application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations." And I think it would be helpful if we said something there to the effect that those comments that deal with the application in front of us or something, because there are people who make comments that are in general about water situations that don't necessarily need to appear on that particular application.

Page 26, this is under (d) (i), "Whether, and to what extent, a valid water right exists," and I found that addition of the phrase "and to what extent" both confusing and unnecessary. I understand we need to say whether or not a valid water right exists, but "whether and to what extent" I don't find that definition anywhere else, either.

Top of page 27. This addresses public interest and I think that's slightly better, but I'd like to think about that a little bit and perhaps be able to discuss that with Janet, if that's acceptable in this process.

On page 29, these are what documents need to be sent to ecology and I can't understand how additional documents -- I think the document should be sent when we send them and I was a little confused by what that means. So, perhaps it could be just stated a little bit plainer.

No. (4), "Any comments received by a board regarding its record of decision within thirty days after ecology's final decision must be forwarded to ecology within five business days of the board's receipt of such comments by the board." I think we need to define what's "receipt by the board" because it can be sent to our staff or our office sometimes and we in our bylaws have called that for applicant's purposes receipt by the board and we can't always do this within five business days. That's just a too short turnaround time. You know, we don't have a permanent office always and enough staff.

I have one other question I can't find. I'd like the record to show there may be other questions in here that if some of these were addressed I might have additional questions, but I would like to, if it's acceptable in this process, be able to further discuss this with Janet and Fred.